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Monday
September 8, 1997

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 9607292–6192–03]

RIN 0648–AD85

Florida Keys National Marine Sanctuary Final Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Final rule; correction.

SUMMARY: This document sets forth the Office of Management and Budget (OMB) control number for the collection of information requirements in the Florida Keys National Marine Sanctuary final regulations. Although the collection of information requirements for the Sanctuary regulations had been approved by OMB when these regulations were issued, the OMB control number was inadvertently omitted from the **Federal Register** documents issuing the final regulations.

FOR FURTHER INFORMATION CONTACT: Richard Roberts, (301) 713–3525, ext. 115.

SUPPLEMENTARY INFORMATION: Pursuant to the Florida Keys National Marine Sanctuary and Protection Act and the National Marine Sanctuaries Act, NOAA developed a comprehensive final management plan and implementing regulations for the Florida Keys National Marine Sanctuary (FKNMS or the Sanctuary). NOAA issued final regulations to implement that plan and govern the conduct of activities within the Sanctuary on January 30, 1997 (62 FR 4578). These regulations were modified on June 12, 1997 (62 FR 32154). The January 30, 1997, **Federal Register** document contained, under ''V Miscellaneous Rulemaking Requirements'', a discussion of the Paperwork Reduction Act, and indicated that the collection of information requirements contained in the final rule was approved by OMB (62 FR 4578, 4606). However, the OMB control number was inadvertently omitted. The collection of information requirements contained in the final Sanctuary regulations had been approved under OMB control number 0648–0141.

The final rule published on January 30, 1997 (62 FR 4578), Docket Number 97–1870, is corrected by adding the following sentence to page 4606, column 2, under the heading ''Paperwork Reduction Act'', at the end of the second paragraph:

The collection of information requirements has been approved under OMB control number 0648–0141.

Dated: August 14, 1997.

Nancy Foster,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 97–23672 Filed 9–5–97; 8:45 am]

BILLING CODE 3510–12–M

RAILROAD RETIREMENT BOARD

20 CFR Parts 222 and 229

RIN 3220–AB28

Family Relationships; Social Security Overall Minimum Guarantee

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: In accord with amendments to the Social Security Act made by section 104 of Public Law 104–121, the Railroad Retirement Board hereby amends its regulations to eliminate the ''living with'' requirement as an alternative to actual dependency as a basis for eligibility for an annuity as the stepchild of a railroad employee, and to provide for termination of the inclusion of a stepchild in the computation of the social security overall minimum guarantee provision when the stepparent's marriage to the natural parent is terminated.

EFFECTIVE DATE: This rule will become effective October 8, 1997.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Michael C. Litt, General Attorney, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611, telephone (312) 751–4929, TTD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Section 2(d)(4) of the Railroad Retirement Act provides in pertinent part that a child is deemed dependent if the conditions set forth in sections 202(d)(3),(4), and (9) of the Social Security Act are met. Since section 202(d)(4), as amended by Public Law 104–121, requires as a condition of dependency that the child have received one-half his or her support from the stepparent, and eliminates the alternative of the child having lived with the stepparent as a means of establishing dependency, this change in the definition of dependency in regard to stepchildren applies to benefits paid under the Railroad Retirement Act. Specifically, it will impact upon the entitlement of a spouse or survivor of an employee whose entitlement is based upon having a stepchild of the employee in care, or on an individual seeking a child's annuity as a stepchild of an employee. In these instances, actual dependency on the employee will have to be established for purposes of entitlement. The amendment is effective with respect to the benefits of individuals who become entitled to benefits for July 1996 and later.

The change will also affect the inclusion of auxiliary beneficiaries in the computation of the employee annuity under the social security overall minimum guarantee provision of the Railroad Retirement Act. The social security overall minimum guarantee provision guarantees that a railroad retirement annuitant will receive, in combined benefits under the Railroad Retirement and Social Security Acts, not less than the amount which would have been paid to the employee and members of his family under the Social Security Act if the employee's railroad service had been creditable under that Act.

Public Law 104–121 also amends section 202(d)(1) of the Social Security Act to provide that a child's benefits based on the earnings record of a stepparent will terminate the month after the month in which the stepparent and the natural parent are divorced. The

Railroad Retirement Act contains its own termination provisions: section 5(c)(7) of that Act specifies when a child's annuity paid under the Railroad Retirement Act terminates. Therefore, this amendment to section 202(d)(1) does not directly apply to benefits paid under the Railroad Retirement Act. However, it will affect the inclusion of auxiliary beneficiaries in the computation of the social security overall minimum guarantee provision.

Consequently, under section 202(d)(1), as amended, if the marriage of a railroad employee stepparent and natural parent is terminated, then the stepchild would no longer be included in the computation under the social security overall minimum guarantee provision. Therefore, the Board is proposing to amend its regulations to provide that the inclusion of the stepchild in the computation under the social security overall minimum guarantee provision will terminate when the marriage of the stepparent and the natural parent is terminated.

The Board published this rule as a proposed rule on May 22, 1997 (62 FR 27989), and invited comments by July 21, 1997. None were received.

The Office of Management and Budget has determined that this is not a significant regulatory action under Executive Order 12866. There are no new information collections associated with this rule.

List of Subjects in 20 CFR Parts 222 and 229

Railroad employees, Railroad retirement.

For the reasons set out in the preamble, title 20, chapter II, parts 222 and 229 of the Code of Federal Regulations are amended as follows:

PART 222—FAMILY RELATIONSHIPS

1. The authority citation for part 222 continues to read as follows:

Authority: 45 U.S.C. 231f.

§ 222.55 [Amended]

2. Section 222.55 is amended by removing the words ''is living with or''.

PART 229—SOCIAL SECURITY OVERALL MINIMUM GUARANTEE

3. The authority citation for part 229 continues to read as follows:

Authority: 45 U.S.C. 231f(b)(5).

4. Section 229.42 is amended by removing the period at the end of paragraph (f), by adding ''; or'' to the end of paragraph (f), and by adding a new paragraph (g) to read as follows:

§ 229.42 When a child can no longer be included in computing an annuity rate under the overall minimum.

* * * * *

(g) In the case of a stepchild of the employee, the month after the month in which the divorce between the stepparent and the natural parent becomes final.

Dated: August 27, 1997.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 97–23675 Filed 9–5–97; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[SPATS No. IN–127-FOR; State Program Amendment No. 95–5]

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Indiana regulatory program (hereinafter referred to as the ''Indiana program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Indiana proposed revisions to its rules pertaining to an exemption for coal extraction incidental to the extraction of other minerals. The amendment is intended to revise the Indiana program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: September 8, 1997.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204–1521, Telephone (317) 226–6700.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Indiana Program

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. Background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the July 26, 1982, **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 914.10, 914.15, and 914.16.

II. Submission of the Proposed Amendment

By letter dated March 7, 1997 (Administrative Record No. IND–1565), Indiana submitted a proposed amendment to its program pursuant to SMCRA. Indiana submitted the proposed amendment in response to the required program amendments at 30 CFR 914.16(cc) and 914.16(dd). The proposed amendment revises the Indiana Administrative Code (IAC) at 310 IAC 12–1 pertaining to an exemption for coal extraction incidental to the extraction of other minerals.

OSM announced receipt of the proposed amendment in the April 29, 1997, **Federal Register** (62 FR 23192), and in the same document opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment. The public comment period closed on May 29, 1997. Because no one requested a public hearing or meeting, none was held.

During its review of the amendment, OSM identified a concern relating to 310 IAC 12–1–7.1(a), public availability of information submitted for an exemption for coal extraction incidental to the extraction of other minerals. The proposed rule did not specify where the information would be made available. OSM notified Indiana of this concern by letter dated June 16, 1997 (Administrative Record No. IND–1572).

By letter dated July 11, 1997 (Administrative Record No. IND–1577), Indiana responded to OSM's concern by submitting a policy statement specifying where all public documents, including information submitted under 310 IAC 12–1, would be maintained for inspection and copying by the public. Because the additional information merely clarified the provision at 310 IAC 12–1–7.1(a), OSM did not reopen the public comment period.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment. Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph

notations to reflect organizational changes resulting from this amendment.

1. Revisions to Indiana's Rules That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

The proposed State rules, pertaining to an exemption for coal extraction incidental to the extraction of other minerals, listed in the table contain language that is the same as or similar to the corresponding sections of the Federal regulations. Differences between the proposed State rules and the Federal regulations are nonsubstantive.

Topic	State regulation	Federal regulation counterpart
Contents of application for exemption	310 IAC 12–1–7(a)	30 CFR 702.12, Introductory sentence
Contents of application for exemption	310 IAC 12–1–7(a)(15)(A)	30 CFR 702.12(o)(1)
Revocation and enforcement	310 IAC 12–1–11(b)	30 CFR 702.17(b)
Revocation and enforcement	310 IAC 12–1–11(c)(1) and (2)	30 CFR 702.17(c)(1) and (2)
Revocation and enforcement	310 IAC 12–1–11(d)(1) through (3)	30 CFR 702.17(d)(1) through (3)

Because the above proposed revisions are identical in meaning to the corresponding Federal regulations, the Director finds that Indiana's proposed rules are no less effective than the Federal regulations.

2. 310 IAC 12–1–7(17) Exemption for Coal Extraction Incidental to the Extraction of Other Minerals; Contents of Application for Exemption.

Indiana proposed to delete subdivision (17), which requires that information collected under the provision of section 12–1–7 be subject to the public availability of information provisions in 310 IAC 12–3–17. As discussed below in Finding No. 3, Indiana proposed to add a new section at 310 IAC 12–1–7.1 that contains provisions pertaining to public availability of information that are substantively identical to the Federal regulations at 30 CFR 702.13. Therefore, the Director finds that the removal of subdivision (17) will not render the Indiana rules less effective than the Federal regulations.

3. 310 IAC 12–1–7.1 Exemption for Coal Extraction Incidental to the Extraction of Other Minerals; Public Availability of Information

Indiana proposed to add new section 12–1–7.1 in response to OSM's requirement at 30 CFR 914.16(cc) that Indiana amend its rules to make it clear that information submitted under 310 IAC 12–1–7 must be held until at least three years after expiration of the period during which the subject mining area is active. Subsection (a) requires that except as provided in subsection (c), all information submitted shall be made immediately available for public inspection and copying and shall be maintained until at least three years after expiration of the period during which the subject mining area is active. Per Indiana's policy statement dated July 11, 1997 (Administrative Record No. IND–1577), all information submitted would be maintained in the Division of Reclamation Field Office at Jasonville, Indiana, and it would be available for inspection and copying by the public during regular office hours. The Jasonville Field Office is located closest to all surface mining activities conducted in the State of Indiana. Subsection (b) allows Indiana to keep information submitted confidential if the person submitting the information requests in writing, at the time of submission, that it be kept confidential and demonstrates that the information concerns trade secrets or is privileged commercial or financial information of the persons intending to conduct operations. Subsection (c) requires information requested to be held confidential under subsection (b) not be made publicly available until after notice and opportunity to be heard is afforded to persons both seeking and opposing disclosure of the information.

The Director finds that Indiana's proposed rule along with its policy statement is consistent with and no less effective than the Federal regulations at 30 CFR 702.13 and that it satisfies the required amendment at 30 CFR 914.16(cc). Therefore, the Director is approving the proposed amendment at 310 IAC 12–1–7.1, and is amending 30 CFR 914.16 to remove paragraph (cc).

4. 310 IAC 12–1–11(c)(3) Exemption for Coal Extraction Incidental to the Extraction of Other Minerals; Revocation and Enforcement

Indiana proposed to add new subdivision (c)(3) in response to OSM's requirement at 30 CFR 914.16(dd) that Indiana amend 310 IAC 12–1–11 to add a counterpart to 30 CFR 702.17(c)(3). Subdivision (c)(3) requires that a petition for administrative review filed under subdivision (c)(2) not suspend the effect of a decision on whether to revoke an exemption.

The Director finds that Indiana's proposed rule is consistent with and no less effective than the Federal regulation at 30 CFR 702.17(c)(3) and that it satisfies the required amendment at 30 CFR 914.16(dd). Therefore, the Director is approving the proposed amendment at 310 IAC 12–1–11(c)(3), and is amending 30 CFR 914.16 to remove paragraph (dd).

IV. Summary and Disposition of Comments

Public Comments

OSM solicited public comments on the proposed amendment, but none were received.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Indiana program (Administrative Record No. IND–1567). On May 8, 1997 (Administrative Record No. IND–1574, the Mine Safety and Health Administration responded without comment.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is require to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Indiana proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request the EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from the EPA (Administrative Record No. IND–1567). The EPA did not respond to OSM's request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments on the proposed amendments which may have an effect on historic properties from the SHPO and ACHP. OSM solicited comments on the proposed amendment from the SHPO and ACHP (Administrative Record No. IND–1567). Neither the SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Indiana on March 7, 1997, pertaining to revisions to Indiana's rules relating to an exemption for coal extraction incidental to the extraction of other minerals, and removes the required amendments at 30 CFR 914.16(cc) and (dd).

The Director approves the rules as proposed by Indiana with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 914, codifying decisions concerning the Indiana program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 914

Intergovernmental relations. Surface mining, Underground mining.

Dated: August 20, 1997.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 914 is amended as set forth below:

PART 914—INDIANA

1. The authority citation for Part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 914.15 is amended in the table by adding a new entry in chronological order by ''date of final publication'' to read as follows:

§ 914.15 Approval of Indiana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
March 7, 1997	September 8, 1997	310 IAC 12–1–7(a), (15)(A), (17); 12–1–7.1 (a) through (c); 12–1–11(b), (c) (1) through (3), (d) (1) through (3).

§ 914.16 [Amended]

3. Section 914.16 is amended by removing and reserving paragraphs (cc) and (dd).

[FR Doc. 97–23725 Filed 9–5–97; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA11

Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations—Exemptions From the Requirement To Report Transactions in Currency

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Final rule.

SUMMARY: This document contains a final rule amending the Bank Secrecy Act regulations. The amendment will eliminate the requirement to report transactions in currency in excess of $10,000 between depository institutions and certain classes of ''exempt persons'' defined in the rule. It will modify (and, as modified, will supersede), an interim rule on the same subject, to reflect the comments that were requested when the interim rule was published.

There appears elsewhere in today's edition of the **Federal Register** a notice of proposed rulemaking that would further modify the rules for granting exemptions from the currency transaction report filing requirements. The final rule and the notice of proposed rulemaking are additional steps in a process intended to achieve the reduction set by the Money Laundering Suppression Act of 1994 in the number of Bank Secrecy Act currency transaction reports required to be filed annually by depository institutions.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Peter Djinis, Associate Director, FinCEN, (703) 905–3819; Charles Klingman, Financial Institutions Policy Specialist, FinCEN, (703) 905–3602; Stephen R. Kroll, Legal Counsel, Cynthia L. Clark, on detail to the Office of Legal Counsel, and Albert R. Zarate, Attorney-Advisor, Office of Legal Counsel, FinCEN, (703) 905–3590.

SUPPLEMENTARY INFORMATION:

I. Statutory Provisions

The Bank Secrecy Act, Titles I and II of Pub. L. 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330, authorizes the Secretary of the Treasury, *inter alia,* to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, and to implement counter-money laundering programs and compliance procedures. Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311–5330) appear at 31 CFR Part 103. The authority of the Secretary to administer Title II of the Bank Secrecy Act has been delegated to the Director of FinCEN.

The reporting by financial institutions of transactions in currency in excess of $10,000 has long been a major component of the Department of the Treasury's implementation of the Bank Secrecy Act. The reporting requirement is imposed by 31 CFR 103.22, a rule issued under the broad authority granted to the Secretary of the Treasury by 31 U.S.C. 5313(a) to require reports of domestic coins and currency transactions.

Four new provisions (31 U.S.C. 5313(d) through (g)) concerning exemptions were added to 31 U.S.C. 5313 by the Money Laundering Suppression Act of 1994 (the ''Money Laundering Suppression Act''), Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325 (September 23, 1994). According to subsection (d)(1), the Treasury must exempt a depository institution from the requirement to report currency transactions with respect to transactions between the depository institution and the following categories of entities:

(A) Another depository institution.

(B) A department or agency of the United States, any State, or any political subdivision of any State.

(C) Any entity established under the laws of the United States, any State, or any political subdivision of any State, or under an interstate compact between 2 or more States, which exercises governmental authority on behalf of the United States or any such State or political subdivision.

(D) Any business or category of business the reports on which have little or no value for law enforcement purposes.

Subsection (d)(2) requires the Treasury to publish at least annually a list of entities whose currency transactions are exempt from reporting under the mandatory rules. The companion provisions of 31 U.S.C. 5313(e) authorize the Secretary to permit a depository institution to grant additional, discretionary, exemptions from the currency transaction reporting requirements. Subsection (f) places limits on the liability of a depository institution in connection with a transaction that has been exempted from reporting under either subsection (d) or subsection (e) and provides for the coordination of any exemption with other Bank Secrecy Act provisions, especially those relating to the reporting of suspicious transactions. Subsection (g) defines ''depository institution'' for purposes of the new exemption provisions.

The enactment of 31 U.S.C. 5313 (d) through (g) reflects a congressional intention to ''reform * * * the procedures for exempting transactions between depository institutions and their customers.'' *See* H.R. Rep. 103–652, 103d Cong., 2d Sess. 186 (August 2, 1994).[1] The administrative exemption procedures at which the statutory changes are directed are found in 31 CFR 103.22 (b)–(g).

Several reasons have been given for the administrative exemption system's lack of success in eliminating routine currency transactions from operation of the Bank Secrecy Act rules. The first is the retention by banks of liability for making incorrect exemption determinations. The second is the complexity of the administrative exemption procedures. Finally, advances in technology have made it less expensive for some banks to report all currency transactions than to incur the administrative costs and risks of exempting customers and then administering the terms of particular exemptions properly.

II. The Interim Rule

On April 24, 1996, an interim rule (the ''Interim Rule'') adding a new paragraph (h) to the currency transaction reporting rules in 31 CFR 103.22 was published in the **Federal Register**. *See* 61 FR 18204. The Interim Rule exempted, from the requirement to report transactions in currency in excess of $10,000, transactions occurring after April 30, 1996, between banks[2] and

[1] Section 402(b) of the Money Laundering Suppression Act states simply that in administering the new statutory exemption procedures

the Secretary of the Treasury shall seek to reduce, within a reasonable period of time, the number of reports required to be filed in the aggregate by depository institutions pursuant to section 5313(a) of title 31 * * * by at least 30 percent of the number filed during the year preceding [September 23, 1994,] the date of enactment of [the Money Laundering Suppression Act].

[2] The Interim Rule used the term *bank* to define the class of financial institutions to which the Interim Rule applied. As defined in 31 CFR 103.11(c), that term includes both commercial banks and other classes of depository institutions at which the language of 31 U.S.C. 5313 is directed.

customers who fall into one of five classes of exempt persons:

1. Banks, to the extent of their banking operations and transactions within the United States; [3]
2. Departments and agencies of the United States and of states and their political subdivisions;
3. Any entity established under the laws of the United States [4] or of any state or its political subdivisions, or under an interstate compact, that exercises governmental authority on behalf of the United States or any such state or political subdivision;
4. ''Listed corporations,'' that is, corporations whose common stock is listed on the New York Stock Exchange or the American Stock Exchange or has been designated as a Nasdaq National Market Security listed on the Nasdaq Stock Market; [5]
5. Subsidiaries of listed corporations that are consolidated with such corporations for federal income tax purposes.

See 31 CFR 103.22(h)(2) (i)–(v). The first three categories of exempt persons specified above are those to whom an exemption is required to be granted by 31 U.S.C. 5313(d)(1) (A)–(C). The final two categories are those entities who are exempted pursuant to the authority contained in 31 U.S.C. 5313(d)(1)(D).

To treat a customer as exempt under the Interim Rule, a bank must file a single form (the same form now used by banks to report a transaction in currency) that identifies the exempt person and the bank involved and must generally take such steps to assure itself that a person is an exempt person that a reasonable and prudent bank would take to protect itself from loan or other fraud or loss based on misidentification of a person's status. Treatment of a customer as an exempt person under the Interim Rule protects a bank generally from any penalty for failure to file a currency transaction report with respect to the exempt person's currency transactions, but it does not affect the obligation of banks to file suspicious activity reports. Currency transactions, like other transactions, between a bank and an exempt person remain subject to the suspicious activity reporting requirements of 31 CFR 103.21, as well as the suspicious activity reporting requirements of the federal bank supervisory agencies. *See also* 12 CFR 21.11 (Office of the Comptroller of the Currency); 12 CFR 208.20 (Federal Reserve System); 12 CFR 353.3 (Federal Deposit Insurance Corporation); 12 CFR 563.180 (Office of Thrift Supervision); 12 CFR 748.1 (National Credit Union Administration).

Because the Interim Rule implemented certain provisions of the Bank Secrecy Act and granted significant relief from existing regulatory requirements, it was made effective on May 1, 1996, less than 30 days after its publication date. The Interim Rule was, however, accompanied by a request for comments on the Rule's terms.

It appears that the Interim Rule did not immediately have the intended effect of reducing the number of routine currency transactions filed by depository institutions. This may have been attributable, at least in part, to banks' reluctance to use the new exemption procedures until the Interim Rule and proposals for the projected second stage of currency transaction filing relief (as to which comments were solicited by the preamble to the Interim Rule) were made final. Deferral of a change in a bank's procedures would permit the automated systems on which many institutions rely to be altered to take account of all the revised currency transaction filing rules at one time. Unfamiliarity with and uncertainty about the meaning of certain provisions of the Interim Rule may also have initially retarded the Rule's use.[6]

Statistics based on the first half of this year indicate that banks are making the transition to the new, streamlined exemption procedures set forth in the Interim Rule. The number of CTR filings for each of the months of February, March, April, May, and June of 1997 is less than the number of filings for those same months in 1996. (FinCEN does not yet have complete information concerning CTR filings for July 1997.) Thus, it appears that the Interim Rule is beginning to have some effect on decreasing the number of CTR filings. FinCEN anticipates that banks will continue to make the transition to the new exemption procedures as they become better acquainted, and more comfortable, with the terms of the new procedures. FinCEN also hopes that the clarifications contained in this document will continue to aid in that transition.

III. Summary of Comments and Revisions

A. Comments on the Notice—Overview

FinCEN received fifty-eight written comments on the Interim Rule. Of these, forty-four comments were submitted by banks or bank holding companies, six by banking trade associations, four by credit unions, one by a credit union trade association, and one each by a compliance consulting firm, an accounting firm, and a law firm, each on its own behalf.

The commenters generally applauded FinCEN's efforts to improve the exemption process. One bank commenter, for example, noted with approval ''the scope and aggressiveness of the Interim Rule'' and found the Rule ''a major step in reducing the Bank Secrecy Act's burden on financial institutions without compromising the BSA's effectiveness'' because it permitted banks to eliminate the cost of reporting ''large denomination, repetitive transactions with public entities and major corporations engaged in legitimate retail activity.'' At the same time, the commenters suggested a number of ways in which the Interim Rule might be improved, and they raised several operating issues that banks had encountered in applying the Interim Rule.

Comments on the Interim Rule focused primarily on five subjects: the definition of an exempt subsidiary of a listed corporation; other aspects of the definition of exempt person; the time frame within which a bank was permitted to designate an existing customer as an exempt person; the need to clarify the relationship between the provisions of paragraph (h) and the terms of the administrative exemption provisions of 31 CFR 103.22(b)–(g); and the interplay between the Interim Rule and previous regulatory guidance provided by the Department of the Treasury with respect to the currency transaction reporting requirements. The specifics of the comments and an explanation of resulting modifications to paragraph (h) are outlined below.

After full and careful consideration of all the comments, 31 CFR 103.22(h), as contained in the Interim Rule, is modified, and, as modified, is adopted as a final rule.

B. Final Rule

The format and substance of the final rule and the Interim Rule are generally the same. The final rule reflects the

[3] The broad definition of ''United States'' in section 103.11(nn) applies.

[4] Again, the broad definition of ''United States'' applies.

[5] The NASDAQ category did not include stock listed under the separate ''Nasdaq Small-Cap Issues'' category.

[6] FinCEN has already issued a notice, FinCEN Notice 97–1, to deal with one such uncertainty. That notice makes clear that an institution may decide, after August 15, 1996, that it wishes to adopt the new exemption system for particular customers, even if it did not do so, for existing customers, before that date, so long as the necessary exemption identifications are filed within 30 days of the first transaction in currency that is sought to be exempted under the new exemption procedures.

following significant modifications to the Interim Rule:

1. The definition of exempt person has been clarified to make clear that banks are eligible to be treated as exempt persons because they are banks, and then only with respect to their domestic operations; a bank that is, or is a subsidiary of, a listed company does not for that reason obtain a second ground for exemption;

2. The definition of exempt person has been amended to treat as a ''listed entity'' and entity, rather than just a corporation, whose common stock or analogous equity interests are listed on an applicable stock exchange;

3. The definition of exempt person has been amended to include any subsidiary of a listed entity that is organized under the laws of the United States or a state and at least 51 percent of whose common stock is owned by the listed entity as shown in a reasonably authenticated corporate officer's certificate, a reasonably authenticated photocopy of Internal Revenue Service Form 851 (Affiliation Schedule), or in the Annual Report or Form 10–K that is filed by the listed entity with the Securities and Exchange Commission;

4. The definition of exempt person has been amended to make clear that an exempt person includes a financial institution, other than a bank, that is a listed entity or a subsidiary of a listed entity, but only to the extent of such entity's domestic operations;

5. The time frame for designating a customer as an exempt person has been clarified to provide that a designation may be made, for any customer, by the close of the 30-day period beginning after the day of the first reportable transaction in currency with that person that is sought to be exempted from reporting under the terms of paragraph (h);

6. Examples of entities exercising governmental authority have been added to the Interim Rule; and

7. A paragraph has been added to make clear that, absent knowledge of a loss of an exempt person's status as such, a bank satisfies its obligations under paragraph (h) by verifying the continued status of exempt persons at least annually.

The changes adopted in the final rule are intended to improve, clarify, and refine the rule's provisions in light of the objectives FinCEN outlined when the Interim Rule was published. Those objectives are reducing the burden of currency transaction reporting, requiring reporting only of information that is of value to law enforcement and regulatory authorities, and, perhaps most importantly, creating an exemption system that is cost-effective and that works. *See* 61 FR 18205.

IV. Specific Comments and Explanation of Revisions

A discussion of the significant comments on the Interim Rule appears below. As noted, many of the comments raised questions about the interaction between the terms of paragraph (h) and various operating requirements of the administrative exemption system.

A. 31 CFR 103.22(h)(1)—Transactions in Currency of Exempt Persons With Banks

Paragraph (h)(1) states that general rule that no report is required under 31 CFR 103.22(a)(1) with respect to any transaction in currency between an exempt person and a bank. The only changes made to this paragraph are ministerial: the phrase ''currency transactions'' in the title of paragraph (h)(1) has been revised to read ''transactions in currency,'' and the phrases ''occurring after April 30, 1996,'' in the title of paragraph (h) and in the title of paragraph (h)(1), and ''that is conducted after April 30, 1996,'' at the end of paragraph (h)(1), have been deleted as unnecessary in a final rule.[7] For consistency, the phrase ''occurring after April 30, 1996'' has also been deleted as unnecessary in paragraph (a)(1).

It should be noted that the exemption language of the final rule is fundamentally different from that of the administrative exemption system. Sections 103.22(a)(1) and 103.22(h)(1) state affirmatively that the reporting requirements of the section do not apply to the transactions described in paragraph (h). In contrast, the administrative exemption provision, 31 CFR 103.22(b)(2), simply states that a bank ''may exempt'' transactions described in that paragraph from reporting. Although, as noted in the preamble to the Interim Rule, *see* 61 FR 18206, the provisions of paragraph (h)(1) do not affirmatively prohibit banks from continuing to report routine currency transactions with exempt persons (and the requirement that exempt persons be designated as such provides banks with operational discretion to determine whether or not to recognize the new provisions), banks that continue to report such routing transactions are supplying the government with information that is not required under the Bank Secrecy Act regulations.

1. Use of Word ''Bank'' Rather Than ''Depository Institution''

FinCEN received no comment on its use of the term ''bank'' instead of ''depository institution'' to define the class of financial institutions, subject to the Bank Secrecy Act, that are exempted from the requirement to report transactions in currency by paragraph (h)(1), and the final rule continues to use the former term. Although 31 U.S.C. 5313(d) refers to mandatory exemptions for certain transactions in currency with ''depository institutions,'' the broad definition of bank contained in 31 CFR 103.11(c) appears to include all categories of institutions included in the statutory ''depository institution'' definition, so that a change in terminology was neither necessary nor advisable (in view of the Bank Secrecy Act regulations' general use of the work ''bank'' for the classes of institutions involved).

2. Coverage of all ''Transactions in Currency''

At least one commenter asked whether paragraph (h), intended to exempt from reporting all ''transactions in currency'' between exempt persons and banks, despite the fact that the administrative exemption system rules of 31 CFR 103.22(b)(2) (i)–(ii) permit banks to exempt from currency transactions reporting only deposits and withdrawals, of currency from existing and specified accounts.[8] The use of the broader term is intentional, as paragraph (h) seeks to elimate all transactions in currency between exempt persons and banks from the reporting rules of section 103.22 (subject to the limitation on exemption for transactions carried out by an exempt person as an agent for another person, as set forth in paragraph (h)(5)). As noted in more detail below, however, the changes made to section 103.22 have no impact on the requirement to report suspicious transactions under 31 CFR 103.21, and the fact that an exempt person wishes to conduct a transaction other than a deposit or withdrawal, or a transaction that does not involve an existing account with the bank involved, may merit further investigation, and perhaps reporting, under the rules of section 103.21.

3. Transactions by Exempt Persons With Financial Institutions Other Than Banks

At least one commeter sought to broaden the scope of subsection (h) to include transactions between exempt

[7] Deletion of the reference to a specific date is not intended in any way to alter the effective date of this change in the Bank Secrecy Act regulations.

[8] Banks are permitted by 31 CFR 103.22(b)(2)(iii) to grant a broader exemption for transactions by government agencies.

persons and financial instituons other than banks. No such change has been made. Although, as noted below, banks are permitted, in a change from prior practice, to recognize ''listed'' non-bank financial institutions as exempt persons, a general grant of automatic exemption for all transactions in currency in excess of $10,000 between exempt persons, on the one hand, and, for example, brokers and dealers in securities, money transmitters, or currency exchange houses, on the other, is neither within the Money Laundering Suppression Act statutory mandate nor justified by the realities of the operation of those businesses.

B. 31 CFR 103.22(h)(2)—Definition of Exempt Person

Paragraph (h)(2) continues to contain the definition of those classes of ''exempt persons'' whose transactions in currency with banks are exempt from reporting under the final rule.

1. Banks

The Interim Rule defines an exempt person to include a bank, to the extent of the bank's domestic operations. One commenter asserted that the treatment of banks as exempt persons ''to the extent of their domestic operations'' is less broad than the present exemption provided for banks by section 103.22(b)(1)(ii). However the language of paragraph (h)(2)(i) is simply a restatement of the language of section 103.22(b)(1)(ii), when the latter definition is read together with the definition of ''domestic'' in section 103.11(k).

The final rule revises paragraphs (h)(2)(iv) and (h)(2)(v) to make clear that a bank is eligible to be treated as an exempt person only with respect to its domestic operations; a bank that is a listed entity or a subsidiary of a listed entity does not for that reason obtain a second ground for exemption.

2. Subsidiaries or Affiliates of Banks

At least one commenter asked whether the exempt person definition included subsidiaries or affiliates of banks (so that a transaction in currency between a bank subsidiary and a second bank would be exempt from reporting in the same manner as a transaction between the subsidiary's bank parent and the second bank.) The bank Secrecy Act regulations do not generally treat bank subsidiaries as falling within the definition of bank for purposes of the regulations, and until that basic concept is re-evaluated, it is premature to extend automatic relief for currency transaction reporting purposes to non-bank subsidiaries and affiliates of banks.

3. Government Entities

Paragraph (h)(2)(ii), which treats various federal, state, and local government departments and agencies as exempt persons, is unchanged.

Several commenters asked about the status of tribal governments and tribal enterprises under paragraph (h). The definition of ''United States'' in section 103.11(nn) includes ''the Indian lands (as that term is defined in the Indian Gaming Regulatory Act),'' [9] so that tribal governments are eligible to be exempt persons under paragraph (h); whether particular enterprises conducted on tribal lands, for example tribal casinos, are themselves exempt depends upon the manner in which they are organized and operated. Thus, a tribal casino that is operated as a department of a tribal government would generally qualify as an exempt person, but an independently operated management company for such a casino, or a corporation of which the tribe was a shareholder, would likely not so qualify. While FinCEN would be pleased to provide further guidance on that question on the basis of the facts of a particular situation, it is not feasible on the current state of the record do so in the Bank Secrecy Act regulations themselves.

One commenter argued that the definition of government agency in paragraph (h)(2)(ii) would exclude exemption for agencies of the District of Columbia. That is not the result of the definition, since the definition of ''United States'' in section 103.11(nn) includes the District of Columbia.

4. Entities That Exercise Governmental Authority

Paragraph (h)(2)(iii), which treats as exempt persons entities established by federal, state, or local governments, or by interstate compact, that exercise governmental authority, also is unchanged.

5. Listed Entities

The Interim Rule defines an exempt person to include corporations listed on national securities exchanges. Several commenters suggested that the definition of exempt person be broadened to include partnerships and other non-corporations listed on those exchanges. One commenter pointed out that the rationale FinCEN gave for exempting listed corporations—*i.e.*, the scale of enterprises listed on the nation's largest securities exchanges, and the variety of internal and external controls to which they are subject, make their use for money laundering sufficiently unlikely to permit relaxation of the current transaction reporting rules—applies to any listed entity regardless of its form. After consideration of such comments, Treasury has amended the Interim Rule to expand the definition of an exempt person in paragraph (h)(2)(iv) to include any entity listed on an applicable national securities exchange.

A number of commenters cited the difficulty of determining whether a customer was listed on one of the three cited stock exchanges or was a subsidiary of a company so listed. As noted in the preamble to the Interim Rule, it is impossible to reduce the volume of currency transaction reports to the extent that the Interim Rule tries to do without creating some temporary inconvenience as the terms of the system change. The determinations required are straightforward and are to be based on easily available information, especially for financial professionals. FinCEN continues to believe that the degree of effort involved in researching whether a company's stock is listed as a national stock exchange, or whether a corporation is a subsidiary of a public company, is well within the scope of what a prudent bank should know about its customers and their activities.

There is no limit on the ''listed entity'' definition based on the nature of a particular company's business. Thus, for example, a listed company that is a gaming enterprise or that issues traveler's checks or money orders or engages in a money remittance business as a principal is not for that reason denied exempt status. See, however, the limitation on exemption for transactions carried out by an exempt person as an agent for another person, as set forth in paragraph (h)(5).

6. Subsidiaries of Listed Entities

The Interim Rule treats as an ''exempt'' subsidiary any subsidiary that is included in the consolidated federal income tax return of a listed corporation. FinCEN sought alternative formulations that bank employees would find easy to apply and that would accomplish the goals of the Interim Rule more effectively than the consolidated return formulation. At least one commenter stated that an entity that is listed as a subsidiary on a listed entity's SEC report 10K or an annual report should be considered an exempt person. After consideration of these comments, FinCEN has amended the definition of an exempt subsidiary to include any subsidiary that is organized under the laws of the United States or of any state and at least 51 per

[9] The term Indian Gaming Regulatory Act is itself defined in § 103.11(rr).

cent of whose common stock is owned by the listed entity. Evidence of such ownership may be shown by any of the ways listed in paragraph (h)(4)(iv), including reliance upon a listed entity's Annual Report or Form 10–K, filed in each case by the listed entity with the Securities and Exchange Commission.[10]

7. Financial Institutions Other Than Banks

New paragraph (h)(2)(vi), which relates to financial institutions other than banks, has been added to the Interim Rule. This new paragraph clarifies that non-bank financial institutions that are, or are subsidiaries of, listed entities, are exempt persons only to the extent of their domestic operations.

C. 31 CFR 103.22(h)(3)—Designation of Exempt Person

Paragraph (h)(3) sets forth the procedures for designating an exempt person. A few commenters sought clarification of the time frame in which a bank could designate an exempt person. At least one commenter stated that the Interim Rule could be interpreted as precluding a bank from designating an existing customer as an exempt person after August 15, 1996. After consideration of such comments, FinCEN has amended the Interim Rule, in accord with FinCEN Notice 97–1, to make clear that a bank can designate any customer as an exempt person by the close of the 30-day period beginning after the day of the first reportable transaction in currency with that person that is sought to be exempted from reporting under the terms of paragraph (h).

At least one commenter also requested that FinCEN amend the Interim Rule to allow banks, when designating exempt persons, to file a list of its domestic bank customers instead of filing a form that identifies such a customer as an exempt person. As set forth in new paragraph (h)(3)(iii), a bank, when designating an exempt person, may either file an Internal Revenue Form 4789 in which line 36 is marked appropriately or filed, in such a format and manner as FinCEN may specify, a current list of its domestic bank customers.

At least one commenter further suggested that it would be efficient for banks simply to file designations for all their government customers (as well as their bank customers), regardless of whether those customers engage in transactions in excess of $10,000. FinCEN will consider making such a change to paragraph (h) for government entities at an appropriate time in the future.

D. 31 CFR 103.22(h)(4)—Operating Rules for Designating Exempt Persons

Paragraph (h)(4) continues to state general operating rules for designating exempt persons. Changes to the details of the operating rules are outlined below.

1. General Standard

A number of commenters asked for greater specificity about the manner in which the determination that a customer is an exempt person should be made and documented. Specific questions included, for example, whether a bank was required to keep an ''exemption list'' of exempt persons, whether a signed customer statement was required for each exempt person, whether paper copies of filings designating exempt persons should be maintained by a bank, and how long records relevant to the exemption determination must be retained.

The language of paragraph (h)(4)(i) has been revised to make explicit the general requirement, implicit in the original language, that a bank must document, in the manner that a reasonable and prudent bank would do, its determination that a customer is eligible to be treated as an exempt person, in compliance with the terms of paragraph (h). A new paragraph (h)(4)(v), discussed below, has been added to deal specifically with record retention.

FinCEN believes that specific additional language is unnecessary and would be contrary to the spirit of the changes in the currency transaction filing rules that FinCEN is working with the banking industry to make. Because the situation of each bank is different, any uniform set of rules can only stifle creativity and efficiency in building whatever record an individual bank's situation and determinations warrant. Thus, for example, it would certainly be prudent for a bank to maintain, or to be able to retrieve, in a central location a list of the customers that it treats as exempt persons; but whether the list is separately maintained, or simply retrievable from general records upon need, is a matter for each bank to determine. Similarly many institutions, as a general rule, retain copies of documents filed with the Treasury Department; however, whether forms filed magnetically must be converted into paper copies for examination purposes is a matter that should be decided in accordance with general bank policies, rather than in a universal regulatory document.

As in other situations, FinCEN believes that too much attention has in the past been paid to mechanical compliance with particular ''check list'' requirements, rather than to the spirit of compliance and the monitoring necessary effectively to deter or detect money laundering at the nation's financial institutions. Thus, it hesitates, in attempting to re-engineer the currency transaction reporting system, to recreate the defects of the system being replaced. FinCEN intends to communicate the policy determinations behind the changes in the rules to the federal financial institution supervisory agencies, whose authority includes the authority to examine for compliance with Bank Secrecy Act requirements, to assure, insofar as possible, that the expectations of compliance examiners are in accord with the terms and spirit of the new rules.

At least one commenter suggested that FinCEN should bear the burden of listing all the entities falling within the classes of exempt persons set forth in paragraph (h)(2). This suggestion has not been adopted in the final rule. The list requirement is a flexible one and is amply met by reliance on publicly-available sources. For FinCEN to publish a list of particular exempt customer *ab initio* would amount to a licensing requirement that would neither be efficient nor feasible.

At the same time, as indicated in the preamble to the Interim Rule, *see* 61 FR 18208, FinCEN is exploring the possibility of producing a nationwide list of exempt persons from filed designations. FinCEN also is exploring the possibility of linking its own Web Site to those of the national securities exchanges.

2. Governmental Entities

A few commenters requested that FinCEN provide examples of those entities established under U.S., state, or local law, under an interstate compact, that exercise governmental authority. A sentence has been added to paragraph (h)(4)(ii) to cite the New Jersey Turnpike Authority and the Port Authority of New York and New Jersey as examples of entities that exercise governmental authority.

3. Listing Information

Language has been added to paragraph (h)(4)(iii) to make it clear that a bank may rely, in determining whether a company is a listed company,

[10] Several commenters suggested that non-profit corporations generally be added to the list of exempt persons. FinCEN does not believe that a blanket provision of this sort would be workable or in keeping with the balance of objectives outlined in 31 U.S.C. 5313 (d)–(g), given the variety of organizations that can claim non-profit status.

on information available from the ''Edgar'' electronic information system maintained by the Securities and Exchange Commission (http://www.sec.gov/edgarhp.htm), and on information contained in the Web Sites maintained by the New York Stock Exchange ((http://www.nyse.com), the American Stock Exchange (http://www.amex.com), and the National Association of Securities Dealers (http://www.nasdaq.com).

4. Subsidiary Status

Paragraph (h)(4)(iv) has been amended to provide banks with the additional options, when determining whether a person is exempt as a subsidiary of a listed entity, of relying upon the listed entity's Annual Report or Form 10–K (filed with the Securities and Exchange Commission) for designation of the listed entity's subsidiaries.

5. Records Maintenance

New paragraph (h)(4)(v) has been added to the Interim Rule to make clear that records maintained by a bank to document its administration of the rules of this paragraph (h) must be maintained in accordance with the terms of 31 CFR 103.38, which, *inter alia,* requires that records be maintained for a period of five years.

E. 31 CFR 103.22(h)(5)—Limitation on Exemption

Paragraph (h)(5) states that the exemption from reporting contained in paragraph (h)(1) does not apply to a transaction carried out by an exempt person as an agent of another person who is the beneficial owner of the funds that are the subject of a transaction in currency. At least one commenter requested that FinCEN eliminate this limitation. This requested change has not been adopted in the final rule. Such a change would allow an exempt person to lend its status to any person's transactions, thereby circumventing the purposes of carefully defining the classes of exempt persons.

At least one commenter noted a difficulty involved in tracking deposits from large grocery stores, because some of the deposits involved may be monies sent to holding accounts for money order or traveler's check companies for which the grocery stores act as agent. Although FinCEN recognizes that distinguishing between the two (or more) sources of deposits represents an additional effort, it believes that the holding accounts are ultimately relatively easy to distinguish from the store's own operating accounts and do not commingle operating funds and funds used to pay for money service products sold by grocery stores as agents for other concerns. To the extent that the industry still finds that the limitation set forth in paragraph (h)(5) will result in unnecessary inconvenience, FinCEN will consider additional comments on this subject when it considers comments to the notice of proposed rulemaking on exemptions that appears elsewhere in today's edition of the **Federal Register**.

F. 31 CFR 103.22(h)(6)—Effect of Exemption: Limitation on Liability

Paragraph (h)(6) continues to state the general rule that once a bank has complied with the terms of paragraph (h), it is protected from any penalty for failure to file a currency transaction report concerning a transaction in currency by an exempt person. The language set forth in paragraph (h)(6)(i) of the Interim Rule has been deleted in the final rule; the issue of when a bank must designate customers it has previously treated as exempt, is addressed in the notice of proposed rulemaking regarding exemptions.

At least one commenter expressed the concern that the ''automatic revocation'' provisions of paragraph (h)(8), in effect, force banks to maintain a constant vigil of the status of entities they have designated as exempt persons. New paragraph (h)(6)(ii) has been added to clarify that, absent specific knowledge of any information that would be grounds for revocation, a bank is required to verify the status of those entities it has designated as exempt persons only once each year.

A bank may, at present, elect to treat a person as exempt under either the administrative exemption system rules of sections 103.22(b)–(g) or the rules of section 103.22(h). As outlined in the Interim Rule, and as confirmed above, the exemption procedures for each system are independent of the other. Thus, if a bank treats a person as exempt under the new exemption procedures set forth in paragraph (h), it need not place that person on its exempt list under the administrative exemption system rules, *see* sections 103.22(b)–(g), but, conversely, the fact that a person is on an exemption list (whether it is a bank, a government entity, or a listed company), does not eliminate the obligation of a bank that wants to adopt the new system from filing the single form designating the customer as an exempt person.

The limitation on liability set forth in paragraph (h)(6) does not apply if a bank chooses to exempt a person on a basis as provided by the administrative exemption system. One comment found this result slightly puzzling, since the Interim Rule is clearly designed to designate those entities whose routine transactions is currency with banks are of little or no law enforcement value. However, even the Interim Rule involves some trade-off in policy outcomes, and the proper designation of exempt persons, to provide the Department of the Treasury with a list of exempt entities, is an important part of the overall system of which the Interim Rule is a component. The statutory liability limitation of 31 U.S.C. 5313(f) does not extend to banks that continue to use the administrative exemption system during the pendency of the rulemaking that would reform that system.

One commenter on the Interim Rule argued that ''the process of exempting a business and the liability for same should be primarily borne by the customer and FinCEN.'' That is neither the scheme of the Bank Secrecy Act nor of this rule, and such an approach would place the Treasury Department, in effect, directly on the banking floor in dealing with a bank's customers. The final rule, like the notice of proposed rulemaking also issued today, is an effort to work with the banking industry to fashion an effective and workable exemption system.

G. 31 CFR 103.22(h)(7)—Obligation to File Suspicious Activity Reports, Etc

No changes were made to this paragraph. Paragraph (h)(7) continues to state that the new exemption procedures set forth in paragraph (h) do not create any exemption, or have any effect at all, on the requirement that banks file suspicious activity reports with respect to transactions that satisfy the requirements of the rules of FinCEN, 31 CFR 103.21, and the federal bank supervisory agencies relating to suspicious activity reporting. Similarly, a customer's status under paragraph (h) has no impact on other Bank Secrecy Act requirements relating to record retention or reporting. Thus, for example, the fact that a customer is an exempt person for purposes of the currency transaction reporting rules has *no* effect on the obligation of a bank to retain records of funds transfers by such person, to the extent required by 31 CFR 103.33(e), or to retain records in connection with an issuance or sale of bank or cashier's checks, money orders or traveler's checks to such person, as required by 31 CFR 103.29.

H. 31 CFR 103.22(h)(8)—Revocation

Paragraph (h)(8) continues to provide that the status of an exempt person automatically ceases, without any action

or notice by the Department of the Treasury, when an entity ceases to be listed on the applicable stock exchange or a subsidiary of a listed entity ceases to have at least 51 per cent of its common stock owned by a listed entity. Paragraph (h)(8) explicitly refers back to the limitation on liability set forth in paragraph (h)(6)(ii), to make clear that absent specific knowledge that would be grounds for revocation, a bank is required to verify the status of those entities it has designated as exempt persons only once each year.

I. 31 CFR 103.22(h)(9)—Transitional Rule

New paragraph (h)(9) states the transitional rule for applying new paragraph (h)(2)(vi). The rule provides that during the period ending May 1, 1998, no penalty will be imposed on a bank that treats as an exempt person a non-bank financial institution, to an extent beyond that institution's domestic operations, that is a listed entity or a subsidiary of a listed entity.

V. Regulatory Matters

A. Executive Order 12866

The Department of the Treasury has determined that this final rule is not a significant regulatory action under Executive Order 12866.

B. Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), Pub. L. 104–4 (March 22, 1995), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to designate and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under section 202 and has concluded that on balance this final rule provides the most cost-effective and least burdensome alternative to achieve the objectives of the rule.

C. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because the agency was not required to publish a notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

D. Paperwork Reduction Act

By expanding the applicable exemptions from an information collection that has been reviewed and approved by the Office of Management and Budget (OMB) under control number 1505–0063, the final rule significantly reduces the existing burden of information collection under 31 CFR 103.22. Thus, although the final rule advances the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*, and its implementing regulations, 5 CFR Part 1320, the Paperwork Reduction Act does not require FinCEN to follow any particular procedures in connection with the promulgation of the final rule.

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Banks and banking, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Law enforcement, Penalties, Reporting and recordkeeping requirements, Securities, Taxes.

Amendment

For the reasons set forth above in the preamble, the interim rule amending 31 CFR Part 103, which was published at 61 FR 18204 on April 24, 1996, is adopted as a final rule with the following changes:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for Part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

2. Section 103.22 is amended by revising the second sentence in paragraph (a)(1) and by revising paragraph (h) to read as follows:

§ 103.22 Reports of currency transactions.

(a)(1) * * * Transactions in currency by exempt persons with banks are not subject to this requirement to the extent provided in paragraph (h) of this section. * * *

* * * * *

(h) *No filing required by banks for transactions by exempt persons.*

(1) *Transactions in currency of exempt person with banks.* Notwithstanding the provisions of paragraph (a)(1) of the section, no bank is required to file a report otherwise required by that section, with respect to any transaction in currency between an exempt person and a bank.

(2) *Exempt person.* For purposes of this section, an exempt person is:

(i) A bank, to the extent of such bank's domestic operations;

(ii) A department or agency of the United States, of any state, or of any political subdivision of any state;

(iii) Any entity established under the laws of the United States, of any state, or of any political subdivision of any state, or under an interstate compact between two or more states, that exercises governmental authority on behalf of the United States or any such state or political subdivision;

(iv) Any entity, other than a bank, whose common stock or analogous equity interests are listed on the New York Stock Exchange or the American Stock Exchange or whose common stock or analogous equity interests have been designated as a Nasdaq National Market Security listed on the Nasdaq Stock Market (except stock or interests listed under the separate ''Nasdaq Small-Cap Issues'' heading);

(v) Any subsidiary, other than a bank, of any entity described in paragraph (h)(2)(iv) of this section (a ''listed entity'') that is organized under the laws of the United States or of any state and at least 51 per cent of whose common stock is owned by the listed entity; and

(vi) Notwithstanding paragraphs (h)(2)(iv) and (h)(2)(v) of this section, any financial institution other than a bank, that is an entity described in paragraph (h)(2)(iv) or (h)(2)(v) of this section, to the extent to such financial institution's domestic operations.

(3) *Designation of exempt persons.* (i) A bank must designate each exempt person with whom it engages in transactions in currency by the close of the 30-day period beginning after the day of the first reportable transaction in currency with that person that is sought to be exempted from reporting under the terms of paragraph (h) of this section.

(ii) Except where the person sought to be exempted is another bank as described in paragraph (h)(2)(i) of this section, designation of an exempt person shall be made by a single filing of Internal Revenue Service Form 4789, in which line 36 is marked ''Designation of Exempt Person'' and items 2–14 (Part I, Section A) and items 37–49 (Part III) are completed, or by filing any form specifically designated by FinCEN for this purpose. The designation must be made separately by each bank that treats the person in question as an exempt person.

(iii) When designating another bank as an exempt person, a bank must make either the filing as described in

paragraph (h)(3)(ii) of this section or file, in such a format and manner as FinCEN may specify, a current list of its domestic bank customers. In the event that a bank files its current list of domestic bank customers, the bank must make the filing as described in paragraph (h)(3)(ii) of this section for each bank that is a new customer and for which an exemption is sought under this paragraph (h).

(iv) The designation requirements set forth in this paragraph (h)(3) apply whether or not the particular exempt person to be designated has previously been treated as exempt from the reporting requirements of section 103.22(a) under the rules contained in paragraph (b) or (e) of this section.

(4) *Operating rules for designating exempt persons.* (i) Subject to the specific rules of this paragraph (h), a bank must take such steps to assure itself that a person is an exempt person (within the meaning of applicable provisions of paragraph (h)(2) of this section), and to document the basis for its conclusions and its compliance with the terms of this paragraph (h), that a reasonable and prudent bank would take and document to protect itself from loan or other fraud or loss based on misidentification of a person's status.

(ii) A bank may treat a person as a governmental department, agency, or entity if the name of such person reasonably indicates that it is described in paragraph (h)(2)(ii) or (h)(2)(iii) of this section, or if such person is known generally in the community to be a State, the District of Columbia, a tribal government, a Territory or Insular Possession of the United States, or a political subdivision or a wholly-owned agency or instrumentality of any of the foregoing. An entity generally exercises governmental authority on behalf of the United States, a State, or a political subdivision, for purposes of paragraph (h)(2)(iii) of this section, only if its authorities include one or more of the powers to tax, to exercise the authority of eminent domain, or to exercise police powers with respect to matters within its jurisdiction. Examples of entities that exercise governmental authority include, but are not limited to, the New Jersey Turnpike Authority and the Port Authority of New York and New Jersey.

(iii) In determining whether a person is described in paragraph (h)(2)(iv) of this section, a bank may rely on any New York, American or Nasdaq Stock Market listing published in a newspaper of general circulation, or any commonly accepted or published stock symbol guide, on any information contained on the Securities and Exchange Commission ''Edgar'' System, or on any information contained in an Internet World-Wide Web site or sites maintained by the New York Stock Exchange, the American Stock Exchange, or the National Association of Securities Dealers.

(iv) In determining whether a person is described in paragraph (h)(2)(v) of this section, a bank may rely upon:

(A) Any reasonably authenticated corporate officer's certificate;

(B) Any reasonably authenticated photocopy of Internal Revenue Service Form 851 (Affiliation Schedule) or the equivalent thereof for the appropriate tax year; or

(C) A person's Annual Report or Form 10–K, as filed in each case with the Securities and Exchange Commission.

(v) The records maintained by a bank to document its compliance with and administration of the rules of this paragraph (h) shall be kept in accordance with the provisions of section 103.38.

(5) *Limitation on exemption.* A transaction carried out by an exempt person as an agent for another person who is the beneficial owner of the funds that are the subject of a transaction in currency is not subject to the exemption from reporting contained in paragraph (h)(1) of this section.

(6) *Effect of exemption; limitation on liability.* (i) No bank shall be subject to penalty under this part for failure to file a report required by section 103.22(a) with respect to a transaction in currency by an exempt person with respect to which the requirements of this paragraph (h) have been satisfied, unless the bank:

(A) Knowingly files false or incomplete information with respect to the transaction or the customer engaging in the transaction; or

(B) Has reason to believe that the customer does not meet the criteria established by this paragraph (h) for treatment of the transactor as an exempt person or that the transaction is not a transaction of the exempt person.

(ii) Absent specific knowledge of any information that would be grounds for revocation as provided in paragraph (h)(8) of this section, a bank is required to verify the status of those entities it has designated as exempt persons only once each year.

(iii) A bank that files a report with respect to a currency transaction by an exempt person rather than treating such person as exempt shall remain subject, with respect to each such report, to the rules for filing reports, and the penalties for filing false or incomplete reports that are applicable to reporting of transactions in currency by persons other than exempt persons. A bank that continues to treat a person described in paragraph (h)(2) as exempt from the reporting requirements of section 103.22(a) on a basis other than as provided in this paragraph (h) shall remain subject to the rules governing an exemption on such other basis and to the penalties for failing to comply with the rules governing such other exemption.

(7) *Obligation to file suspicious activity reports, etc.* Nothing in this paragraph (h) relieves a bank of the obligation, or alters in any way such bank's obligation, to file a report required by section 103.21 with respect to any transaction, including any transaction in currency, or relieves a bank of any reporting or recordkeeping obligation imposed by this Part (except the obligation to report transactions in currency pursuant to this section to the extent provided in this paragraph (h)).

(8) *Revocation.* The status of any person as an exempt person under this paragraph (h) may be revoked by FinCEN by written notice, which may be provided by publication in the **Federal Register** in appropriate situation, on such terms as are specified in such notice. Without any action on the part of the Treasury Department and subject to the limitation on liability set forth in paragraph (h)(6)(ii) of this section:

(i) The status of an entity as an exempt person under paragraph (h)(2)(iv) of this section ceases once such entity ceases to be listed on the applicable stock exchange; and

(ii) The status of a subsidiary as an exempt person under paragraph (h)(2)(v) of this section ceases once such subsidiary ceases to have at least 51 per cent of its common stock owned by a listed entity.

(9) *Transitional rule.* No penalty will be imposed for the failure to apply paragraph (h)(2)(vi) of this section, if a bank treats a person described in paragraph (h)(2)(iv) or (h)(2)(v) of this section as an exempt person during the period ending May 1, 1998.

Dated: August 27, 1997.

Stanley E. Morris,

Director, Financial Crimes Enforcement Network.

[FR Doc. 97–23643 Filed 9–5–97; 8:45 am]

BILLING CODE 4820–03–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 32

[FRL–5886–5]

Suspension, Debarment and Ineligibility for Contracts, Assistance, Loans and Benefits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendments.

SUMMARY: This rule makes certain technical amendments to the Environmental Protection Agency's rule governing suspension and debarment under nonprocurement programs (40 CFR Part 32), to reflect the Agency's internal reorganization of the Office of Administration and Resources Management (OARM) and the Office of Grants and Debarment (OGD).

EFFECTIVE DATE: September 8, 1997.

FOR MORE INFORMATION CONTACT: Robert F. Meunier, EPA Suspending and Debarring Official, (3901F), 401 M Street, S.W., Washington, DC 20460. Telephone: (202) 564–5399; or E-Mail to: meunier.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

A. Background

On October 1, 1995, the OARM and the OGD implemented plans of internal reorganization that, among other things, created the full-time position of the EPA Suspending and Debarring Official. Under that plan, the nonsupervisory suspension and debarment duties previously performed by the OGD Director were delegated to the Suspending and Debarring Official. Similarly, the appellate duties previously performed by the Assistant Administrator for OARM were delegated to the Director, OGD. The following rule changes are made to reflect those changes. In addition, a typographical error in the definition of the term ''conviction'' is corrected.

Rulemaking Analysis

B. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action.'' However, it has been sent to the Office of Management and Budget for review for consistency with the OMB Common Rule. In addition, this rule will not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (P.L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the provisions of the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) The Paperwork Reduction Act does not apply because this rule does not contain information collection requirements for the approval of OMB under 44 U.S.C. 3501 *et seq.*

Under 5 U.S.C. 801(a)(1)(A)as added by the Small Business Regulatory Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Public Comments

The EPA has not solicited public comments on this final rule.

List of Subjects in 40 CFR Part 32

Environmental protection, Administrative practice and procedure.

Dated: September 29, 1997.

Alvin M. Pesachowitz,

Acting Assistant Administrator, Office of Administration and Resources Management.

For the reasons set out in the preamble, 40 CFR Part 32 is amended as follows:

PART 32—[AMENDED]

1. The authority citation for part 32 continues to read as follows:

Authority: E.O. 701 *et seq.*; 12549; 42 U.S.C. *et seq.*; 7 U.S.C. 136 *et seq.*; 15 U.S.C. 2601 *et seq.*; 20 U.S.C. 4011 *et seq.*; 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 300f, 4901, 6901, 7401, 9801 *et seq.*; E.O. 12689; E.O. 11738; Pub. L. 103–355 Sec. 2455.

§ 32.105 [Amended]

2. In § 32.105, the definition of ''Conviction'' is amended by removing the word ''or'' the first time it appears and adding in its place the word ''of''.

3. In § 32.105, the definition of ''Debarring Official,'' is amended by removing paragraph (3).

4. In § 32.105, the definition of ''Suspending Official,'' is amended by removing paragraph (3).

§ 32.335 [Amended]

5. In § 32.335, paragraph (a) is amended by removing the term ''Assistant Administrator for Administration and Resources Management'' and adding in its place the term ''Director, Office of Grants and Debarment''. Paragraphs (a), (b), (c) and (d) are amended by removing the six references to the term ''Assistant Administrator'' and adding in their places the term ''OGD Director''.

§ 32.430 [Amended]

6. In § 32.430, paragraph (a) is amended by removing the term ''Assistant Administrator for Administration and Resources Management'' and adding in its place the term ''Director, Office of Grants and Debarment''. Paragraphs (a),(b), (c) and (d) are amended by removing the six references to the term ''Assistant Administrator'' and adding in their places the term ''OGD Director''.

[FR Doc. 97–23693 Filed 9–5–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

46 CFR Part 298

[Docket No. R–171]

RIN 2133–AB31

Citizenship Requirements for Owners and Charterers of Vessels With Obligation Guarantees

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD) is amending its regulations at 46 CFR part 298 to conform with provisions contained in Pub. L. 104–239. These provisions eliminate certain U.S. citizenship requirements for participants in MARAD's obligation guarantee program (''Title XI program''). MARAD's citizenship requirements for participants in the Title XI program will be modified as follows: For vessels operating, or to be operated, in the U.S. foreign commerce, no proof of Section 2 citizenship is required; for eligible export vessels and general shipyard facilities, no proof of Section 2 citizenship is required; and for vessels to be operated in the domestic trade, the applicant and any bareboat charterer will be required to establish Section 2 citizenship by affidavit at the time of application only.

DATES: This rule is effective September 10, 1997.

FOR FURTHER INFORMATION CONTACT: Doris Lansberry, Office of the Chief Counsel, Telephone (202) 366–5712.

SUPPLEMENTARY INFORMATION: MARAD's regulations at 46 CFR part 298, Obligation Guarantees, implement Title XI of the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1271 *et seq.*)(''Act''), which authorizes the Secretary of Transportation (''Secretary'') to provide guarantees of debt (''obligation guarantees'') issued for the purpose of financing or refinancing the construction, reconstruction or reconditioning of vessels in United States shipyards, as well as the modernization and improvement of U.S. shipyards (''general shipyard facilities'').

Applications for obligation guarantees are made to MARAD, acting under authority delegated by the Secretary to the Maritime Administrator. Prior to amendment of the Act in 1993, obligation guarantees could be issued only for debt incurred by applicants qualifying as citizens of the United States as defined in Section 2 of the Shipping Act, 1916, as amended (46 App. U.S.C. 802) (''Section 2 citizens'').

Subtitle D of Title XIII of Pub. L. 103–160, enacted in 1993, expanded the Title XI program by authorizing obligation guarantees to finance the construction, reconstruction, or reconditioning of eligible export vessels (to be documented under the laws of a country other than the United States) and modernization and improvement of shipyards in the United States.

Applicants for obligation guarantees for shipyard modernization and improvement and for eligible export vessels under Pub. L. 103–160 are not required to be Section 2 citizens. Also, the Section 2 citizenship requirements found in Sections 1103 and 1104 of the Act were eliminated. The requirement that applicants for obligation guarantees had to be Section 2 citizens was removed from Section 1103(a) and the phrase ''owned by citizens of the United States,'' which modified the phrase ''a vessel or vessels,'' was removed from Section 1104A. However, the requirement set forth in Section 1101(b) of the Act that vessels financed under the Title XI program had to be owned by Section 2 citizens was not eliminated. Therefore, MARAD determined, in 1993, that the Section 2 citizenship requirement for the original Title XI program remained. Subsequently, Congress amended Sections 1101(b), 1104B(a) and 1110(a) of the Act by striking the language ''owned by citizens of the United States'' in each of these Sections (Section 11 of Pub. L. 104–239, the Maritime Security Act of 1996).

Notice and Request for Comments

MARAD published a notice in the **Federal Register** on November 5, 1996, indicating that where its regulations were in conflict with the new law, such requirements were no longer valid. In addition, MARAD requested comments on the following issues:

1. Does MARAD have the legal authority to give retroactive effect to the elimination of its general U.S. citizenship test for existing participants in its obligation guarantee program?

2. If MARAD has such authority, to what extent should it exercise that authority?

3. With respect to owners of vessels with obligation guarantees that operate in the United States domestic (''coastwise'') trade, for which U.S. citizenship requirements remain, can MARAD's security interest in these vessels be sufficiently protected if it adopts the self-certification process used by the United States Coast Guard for purposes of issuing a coastwise trade endorsement?

4. Should U.S. citizens be given priority for loan guarantees over noncitizens for operation of U.S. flag vessels in foreign commerce in the event of scarcity of funds for Title XI obligation guarantees?

MARAD received comments from seven interested parties in response to this Notice. Three commenters are owners of vessels operating either in the foreign or coastwise trade. One commenter is a law firm representing the views of the law firm and not the views of any of its clients. One commenter is an individual representing personal views. Another commenter is a law firm representing the ''personal views'' of the Subcommittee on Coast Guard Documentation, U.S. Citizenship and Related Matters of the Committee on Marine Financing of the Maritime Law Association. Still another commenter is a law firm representing the views of one of its clients operating vessels in the coastwise trade. Most commenters believed that MARAD has the authority to eliminate the citizenship requirement for obligation guarantees retroactively even though the statute did not specifically address this issue, and that MARAD should exercise such authority. Most commenters expressed the view that the Section 2 citizenship requirements in the existing Title XI contracts are either waivable or that MARAD has discretion to enforce or not to enforce contractual obligations. One commenter referenced the U.S. Supreme Court's decision in *Landgraf* v. *USI Film Products,* 511 U.S. 244, 128 L.Ed.2d 229, 114 S.Ct. 1483 (l994), which established tests for determining whether a new statute has retroactive effect. The tests set forth in *Landgraf* are whether the law, if applied retroactively, would impair rights the party had prior to enactment of the law, increase the party's liability for past conduct, or impose new duties with respect to previous transactions. This commenter maintained that elimination of the Section 2 citizenship requirements would not be an impairment of rights held by existing Title XI contract holders, nor an increase in any liability under such contracts, nor the imposition of new duties on existing Title XI contract holders. To the contrary, the commenter believed that Title XI contract holders should be relieved of the duty to file Affidavits of U.S. Citizenship, as well as any consequences and/or liabilities that may result from failure to file such Affidavits.

One commenter stated that citizenship requirements for existing obligation guarantees terminated when the Title XI citizenship amendments became law.

Five of the seven commenters indicated that MARAD should rely upon the self-certification process used by the United States Coast Guard for determining Section 2 citizenship where it remains a requirement of the Title XI program, with one commenter expressing the view that MARAD should have the right to ask for additional information if it is deemed necessary.

As to whether a priority system needs to be established in the event of limited Title XI funds, four commenters opposed such a system, and two stated that U.S. citizens should be given priority for obligation guarantees over noncitizens. The reasons given for establishing a priority were that American taxpayers provide the needed funding for the Title XI program and that giving U.S. citizens priority furthers the purpose of the Act by providing a U.S. citizen-owned fleet needed for defense purposes. The four commenters opposing a priority system cited the absence of any such provision in the Act.

Having considered all the views expressed by the commenters, MARAD is now amending its regulations at 46 CFR part 298 to conform to the statutory changes set forth in Pub. L. 104–239. Additional changes will be required to implement financing provisions of Pub. L. 104–324 (October 19, 1996), the Coast Guard Authorization Act of 1996. Those will be the subject of a separate rulemaking.

Congressional intent in Pub. L. 104–239 is unequivocal as to prospective application of Section 2 citizenship requirements for owners of vessels operating or to be operated in U.S. foreign commerce. The intent is to eliminate the requirement. As stated by Senator Lott in a public letter exchange on the Maritime Security Act ''[a]n interpretation of the Title XI program now allows a U.S. corporation that is eligible to obtain a loan guarantee if it places the vessel under foreign registry, but prohibits a guarantee from being issued if that same corporation desires to place the vessel under U.S. flag. Section 11 of [Pub. L. 104–239] would correct this unintended interpretation so that such a U.S. corporation eligible to own a U.S.-flag vessel would be able to obtain a guarantee without being forced to place the vessel under foreign flag.'' Letter dated March 20, 1996, from Senator Lott to Senator McCain (copy on file at the Maritime Administration).

It is equally clear that Congress retained the requirement of 46 App. U.S.C. 12106 that vessel owners engaged in the coastwise trade must be Section 2 citizens, whether participating in the Title XI program or otherwise. MARAD considered relying on the self-certification process of the Coast Guard as proof of such citizenship for application purposes. However, the Coast Guard process of documenting a vessel is only performed *after* a vessel is delivered. Typically, in Title XI transactions, MARAD is requested to approve commitments prior to delivery and documentation of vessels. MARAD needs to perform its due diligence to ascertain the citizenship of an applicant that is intending to own or operate vessels in the U.S. coastwise trade prior to issuing an irrevocable commitment under Title XI.

Section 1104A(d)(1)(A) of the Act (46 App. U.S.C. 1274(d)(1)(A)) provides that the Secretary shall not extend any guarantee unless the Secretary finds that the proposed project is economically sound. In those instances where an applicant for Title XI benefits intends to operate vessels in U.S. coastwise trade, MARAD's analysis of economic soundness includes the applicant's qualifications to operate in said trade, including all applicable citizenship requirements. This analysis is required because, among other reasons, the revenues from operations are the source of debt service payments, and if the applicant fails to qualify for the intended operations, the proposed project would not be economically sound. Therefore, MARAD will continue to require that all applications for obligation guarantees for U.S. coastwise trade vessels include an affidavit of U.S. citizenship in the form prescribed in its regulations at 46 CFR part 355.

MARAD has decided to adopt the suggestion of several commenters and rely on the self-certification required by the Coast Guard for vessel operators in the coastwise trade to ensure that Title XI obligors in that trade maintain their eligibility. Annual affidavits will no longer be required. Generally, no citizenship filing will be required. As does the Coast Guard, MARAD reserves the right to ask for additional information from Title XI obligors if it is deemed necessary. MARAD believes this significant deregulatory action will be effective.

MARAD has considered whether Congress intended to give retroactive effect to the elimination of its ongoing requirement to certify as to U.S. citizenship for existing participants in its obligation guarantee program, and, if so, whether MARAD should exercise that authority. *Landgraf, supra.* MARAD has concluded that no private party rights under the Title XI program would be impaired by the elimination of the citizenship requirement for Title XI obligors operating in the U.S. foreign commerce, nor would its own due diligance interests be impaired. Therefore, MARAD has determined that no proof of citizenship need be required for Title XI obligors with respect to vessels operating, or to be operated, in the U.S. foreign commerce. Unlike the Title XI coastwise trade program under which MARAD's due diligence interests would be impaired by the complete elimination of citizenship requirements, due to increased risk to the project, there is no comparable risk for U.S. foreign commerce operations. MARAD's Title XI program requirement for identification of the real party at interest in the Title XI transaction for vessels in U.S. foreign trade can be met through review of the documents required in the application process, just as that requirement is met presently in the Title XI export vessel program.

Finally, MARAD has decided not to impose a priority system for Section 2 citizens in the event of limited Title XI funds. In recent years, it has been rare that availability of Title XI funds has limited the approval of eligible projects. More importantly, it is MARAD's experience that Title XI transactions are unique with different vessels, markets, operators, collateral, shipyards, military utility, and dollar value of guarantee. It is not likely that two transactions would be equivalent in all respects but one would meet Section 2 citizenship requirements and the other not. MARAD will continue, as required by Section 1104(g)(1) of the Act, to consider the status of pending applications to guarantee obligations for vessels documented under the laws of the United States and operating or to be operated in the domestic or foreign commerce of the United States before issuing a commitment to guarantee obligations for an eligible export vessel.

To summarize, MARAD's citizenship requirements for participants in the Title XI program will be modified as follows: (1) for vessels operating, or to be operated, in the U.S. foreign commerce, no proof of Section 2 citizenship is required; (2) for eligible export vessels and general shipyard facilities, no proof of Section 2 citizenship is required; and (3) for vessels to be operated in the domestic trade, the applicant and any bareboat charterer will be required to establish Section 2 citizenship by affidavit at the time of application only.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review); Department of Transportation (DOT) Regulatory Policies and Procedures; Pub.L. 104–121

This rulemaking is not considered to be an economically significant regulatory action under E.O. 12866, and is also not considered a major rule for purposes of Congressional review under Pub. L. 104–121. It is not considered to be a significant rule under E.O. 12866 or DOT's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Therefore, it has not been reviewed by the Office of Management and Budget. This rule merely conforms MARAD's regulations at 46 CFR Part 298 to provisions contained in Pub. L. 104–239 with respect to removal of some citizenship requirements for participation in MARAD's Title XI Program. Accordingly, pursuant to provisions of the Administrative Procedure Act, 5 U.S.C. 553 (c) and (d), MARAD finds that notice and public comment are unnecessary and that this rule may become effective in less than 30 days after its publication.

Federalism

MARAD has analyzed this rulemaking in accordance with the principles and criteria contained in E.O. 12612 and has determined that these regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility

The Acting Maritime Administrator certifies that this rulemaking will

reduce the economic burden on Title XI Program participants and will therefore not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

This final rule has no environmental impact and an environmental impact statement is not required.

Paperwork Reduction Act

This rulemaking contains no new information collection requirements. It reduces certain information collection requirements that have been approved by the Office of Management and Budget under control number 2133–0012.

Unfunded Mandates

Under the Unfunded Mandate Reform Act (Pub. L. 104–4) The Maritime Administration must consider whether this rule will result in an annual expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation). The Act also requires that the Maritime Administration identify and consider a reasonable number of regulatory alternatives and, from those alternatives, select the least costly, most cost-effective, or least burdensome alternative that will achieve the objectives of the rule.

As stated above, by this rule the Maritime Administration is significantly reducing a regulatory burden, citizenship reporting requirements, on the public. This final rule does not result in an annual expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and is the least burdensome alternative that will achieve the objectives of the rule.

List of Subjects in 46 CFR Part 298

Loan programs—transportation, Maritime carriers, Mortgages.

Accordingly, 46 CFR part 298 is amended as follows:

1. The authority for 46 CFR Part 298 continues to read as follows:

Authority: 46 App. U.S.C. 1114(b), 1271 et seq; 49 CFR 1.66.

2. Section 298.2 is amended by removing the paragraph designations, and adding the following definitions, in alphabetical order:

§ 298.2 Definitions.

* * * * *

Citizen of the United States means a person who, if an individual, is a Citizen of the United States by birth, naturalization or as otherwise authorized by law or, if other than an individual, meets the requirements of Section 2 of the Shipping Act, 1916, as amended (46 App. U.S.C. 802), as further described at 46 CFR 221.3(c).

* * * * *

Commitment Closing means a meeting of various participants or their representatives in a Title XI financing at which a commitment to issue Guarantees is executed and the forms of the Obligations and the related Title XI documents are also either agreed upon or executed.

* * * * *

3. Section 298.10 is revised to read as follows:

§ 298.10 Citizenship.

(a) *Applicability.* Prior to acquiring a legal or beneficial interest in a Vessel financed under Title XI of the Act which is operating in or will be operated in the U.S. coastwise trade, the applicant and any other Person, (including the shipowner and any bareboat charterer), shall establish its United States citizenship, within the definition ''citizen of the United States'' in § 298.2.

(b) *Prior to Letter Commitment.* The applicant and any Person identified in paragraph (a) of this section, who is required to establish United States citizenship shall, prior to the issuance of the Letter Commitment, establish United States citizenship in form and manner prescribed in 46 CFR part 355.

(c) *Commitment Closing.* Unless otherwise waived by the Secretary for good cause, at least 10 days prior to every Commitment Closing, all Persons identified with the project who have previously established United States citizenship in accordance with paragraphs (a) and (b) of this section shall submit pro forma Supplemental Affidavits of Citizenship which have previously been approved as to form and substance by the Secretary, and on the date of such closing such Persons shall submit to the Secretary three executed copies of such Supplemental Affidavits of Citizenship evidencing the continuing United States citizenship of such Persons bearing the date of such closing.

(d) *Additional information.* If additional material is determined at any time to be essential to clarify or support evidence of U.S. citizenship, such material shall be furnished by the applicant, the Obligor or any Person identified in paragraph (a) of this section upon request by the Maritime Administration.

Dated: September 2, 1997.

By order of the Acting Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 97–23676 Filed 9–5–97; 8:45 am]

BILLING CODE 4910–81–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR PART 64

[CC Docket 90–571; DA 97–1800]

Telecommunications Relay Services, and the Americans With Disabilities Act of 1990

AGENCY: Federal Communications Commission.

ACTION: Suspension of final rule; Order.

SUMMARY: Notice is hereby given that in an Order on Telecommunications Relay Services (''TRS'') and the Americans with Disabilities Act of 1990 (''Order''), CC Docket No. 90–571, adopted on August 20, 1997 and released on August 21, 1997, the Common Carrier Bureau (''Bureau'') suspended enforcement of the requirement that the TRS be capable of handling coin sent-paid calls for one additional year until August 26, 1998. Because the existing technology to provide coin sent-paid calls through the TRS centers has serious deficiencies and no technological solution appears imminent, the Bureau recommended that the Commission conduct a rulemaking during the one year suspension to gather information sufficient to ensure that the Commission's final decision on whether the TRS must be capable of handling coin sent-paid calls is based on a complete and fresh record. During the suspension period, the Bureau directed carriers to continue to make payphones accessible to TRS users under the ''Alternative Plan.'' The Alternative Plan has enabled TRS users to make relay calls from payphones using alternative payment methods since 1995 and has educated TRS users about their abilities to make such calls. In addition, because parties disagree over the effectiveness of the Alternative Plan, the Bureau directed carriers to comply with several additional consumer education requirements designed to improve TRS users' awareness of their ability to make relay calls from payphones.

EFFECTIVE DATES: Section 64.604(a)(3) is suspended effective September 8, 1997 through August 26, 1998. The collections of information for this order will become effective no sooner than October 8, 1997 upon approval of OMB.

The Commission will publish a document at a later date announcing this effective date.

FOR FURTHER INFORMATION CONTACT: Helene Schrier Nankin, 202–418–1466, Network Services Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: Under § 64.604 of the Commission's rules, the TRS must be capable of handling any type of telephone call normally provided by common carriers. The Commission has interpreted this rule to include coin sent-paid calls. The coin sent-paid rule was initially to become effective on July 26, 1993. 47 U.S.C. 225(c) (1996). The Bureau has suspended enforcement of the requirement that common carriers provide coin sent-paid calls through the TRS centers since 1993 based on common carriers' representations that it has been technically infeasible to provide the coin sent-paid service through the TRS centers (''coin sent-paid rule''). Since 1995, carriers have made payphones accessible to TRS users through an Alternative Plan (''Alternative Plan''). The Alternative Plan enables TRS users to make local relay calls for free and to make toll calls from payphones using calling or prepaid cards at or below the coin call rates. The Alternative Plan also requires carriers to educate TRS users about the alternative payment methods that the TRS users can use to make relay calls from payphones. The Bureau directed carriers to file two reports on the effectiveness of the Alternative Plan, due 12 and 18 months after the issuance of the Bureau's order adopting the Alternative Plan (''12 Month Report'' and ''18 Month Report'' respectively). The Bureau listed the two reports on public notice dated May 9, 1997 and received nine comments on June 2, 1997. Commenters disagree on the effectiveness of the Alternative Plan.

In the *Order*, the Bureau suspended the enforcement of the requirement that the TRS be capable of handling coin sent-paid calls for one year until August 26, 1998 because the only technological solution that can provide the coin sent-paid calls through the TRS centers, coin signalling interface (''CSI''), has serious deficiencies and no new technological solution appears imminent. In the *Order*, the Bureau recommends that during the one year suspension, the Commission conduct a rulemaking on coin sent-paid issues to gather information sufficient to ensure that the Commission's final decision on whether the TRS must be capable of handling coin sent-paid calls is based on a complete and fresh record.

In addition, the Bureau directed carriers to continue to make payphones accessible to TRS users under the terms of the Alternative Plan as set forth in the *1995 Suspension Order*, 60 FR 58626 (Nov. 28, 1995), and as modified by the *Order*. The Bureau required carriers: (1) to send a consumer education letter to TRS centers; (2) to inform organizations representing the hearing and speech disability community before attending their regional and national meetings who will be present at the meeting, where the industry's booth will be located, and at what times the booth will be in operation; and (3) to publish an article in Consumer Action Network (''CAN's'') respective organizations'' magazines or newsletters. The Bureau also directed carriers to work jointly with the organizations representing the individuals with hearing and speech disabilities to draft a report about the feasibility of executing the other proposals contained in the 18 Month Report, to be submitted to the Commission within two months of the publication of a summary of the *Order* in the **Federal Register**. In particular, the Bureau directed carriers to consult with representatives from organizations that represent the hearing and speech disability community to determine if it would be useful and possible to educate TRS users about the Alternative Plan by: (1) Sending a letter directly to all CAN's members; and (2) creating laminated cards with visual characters that will provide a pictorial explanation to accompany the text describing access to TRS centers from payphones and which can be distributed to TRS users. If carriers found that these actions are feasible, the Bureau directed carriers to take these actions.

The full text of the *Order* is available for inspection and copying during the weekday hours of 9 a.m. to 4:30 p.m. in the Commission's Reference Center, Room 239, 1919 M Street, N.W., or copies may be purchased from the Commission's duplicating contractor, ITS, Inc., 2100 M Street, N.W., Suite 140, Washington D.C. 20037, phone 202/857–3800.

List of Subjects in 47 CFR Part 64

Communications common carriers, Handicapped, Individuals with hearing and speech disabilities, Telecommunications relay services.

For the reasons set forth in the preamble, § 64.604(a)(3) is suspended from September 8, 1997 through August 26, 1998.

Federal Communications Commission.

Kent Nilsson,

Deputy Division Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 97–23529 Filed 9–5–97 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 212, 225, 244, and 252

[DFARS Case 96–D333]

Defense Federal Acquisition Regulation Supplement; Application of Berry Amendment

AGENCY: Department of Defense (DOD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has adopted as final, with changes, the interim rule that was published at 62 FR 5779 on February 7, 1997. The rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 8109 of the National Defense Appropriations Act for Fiscal Year 1997. Section 8109 provides that, in applying the Berry Amendment, the term ''synthetic fabric and coated synthetic fabric'' shall be deemed to include all textile fibers and yarns that are for use in such fabrics; and that the domestic source restrictions of the Berry Amendment shall apply to contracts and subcontracts for the procurement of commercial items.

EFFECTIVE DATE: September 8, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax (703) 602–0350. Please cite DFARS Case 96–D333.

SUPPLEMENTARY INFORMATION:

A. Background

An interim rule with request for comments was published at 62 FR 5779 on February 7, 1997. The rule amended DFARS Parts 212, 225, 244, and 252 to extend the application of the Berry Amendment domestic source restrictions (10 U.S.C. 2241 note) to textile fibers and yarns that are for use in synthetic fabric and coated synthetic fabric; and to require flow down of the Berry Amendment restrictions to subcontracts for the procurement of commercial items. The interim rule provided an exception to the Berry Amendment restrictions for purchases of fibers and yarns that are for use in synthetic fabric or coated synthetic fabric, if such fabric is to be used as a component of an end item not classified in Federal Supply Group 83 or 84. This

final rule revises the exception for fibers and yarns to apply to those that are for use in synthetic fabric or coated synthetic fabric, if such fabric is to be used as a component of an end item that is not a textile product; and provides examples of textile products, which include, but are not limited to, products in Federal Supply Groups 83 and 84.

Five respondents submitted comments on the interim rule. All comments were considered in developing the final rule.

B. Regulatory Flexibility Act

A final regulatory flexibility analysis has been performed. The analysis is summarized as follows: The legal basis for this rule is the Berry Amendment (10 U.S.C. 2241 note). There were no public comments in response to the initial regulatory flexibility analysis. However, various comments on the interim rule suggested other ways to identify the textile products to which the domestic source restrictions on textile fibers apply. As a result, the final rule uses additional examples to clarify what products are ''textile products.'' This rule is expected to have a positive impact on small entities that provide domestic textile products or specialty metals restricted by the Berry Amendment, because it reduces foreign competition for those items. The rule imposes no new reporting, recordkeeping, or compliance requirements for offerors or contractors. There are no practical alternatives that will meet the requirements of the Berry Amendment.

A copy of the analysis may be obtained by contacting the Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax (703) 602–0350.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because this final rule does not impose any reporting or recordkeeping requirements that require Office of Management and Budget approval under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 212, 225, 244, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR parts 212, 225, 244, and 252, which was published at 62 FR 5779 on February 7, 1997, is adopted as final with the following changes:

1. The authority citation for 48 CFR parts 212, 225, 244, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

2. Section 225.7002–1 is amended by revising paragraph (a)(9) to read as follows:

225.7002–1 Restrictions.

(a) * * *

(9) Any item of individual equipment (Federal Supply Class 8465) manufactured from or containing any of the listed fibers, yarns, fabrics, or materials.

* * * * *

3. Section 225.7002–2 is amended by revising paragraph (j) to read as follows:

225.7002–2 Exceptions.

* * * * *

(j) Purchases of fibers and yarns that are for use in synthetic fabric or coated synthetic fabric (but not the purchase of the synthetic or coated synthetic fabric itself), if such fabric is to be used as a component of an end item that is not a textile product. Examples of textile products, made in whole or in part of fabric, include—

(1) Draperies, floor coverings, furnishings, and bedding (Federal Supply Group 72, Household and Commercial Furnishings and Appliances);

(2) Items made in whole or in part of fabric in Federal Supply Group 83, Textile/leather/furs/apparel/findings/tents/flags, or Federal Supply Group 84, Clothing, Individual Equipment and Insignia;

(3) Upholstered seats (whether for household, office, or other use); and

(4) Parachutes (Federal Supply Class 1670).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 252.225–7012 is amended by revising the clause date and paragraphs (a)(10) and (b)(4) to read as follows:

252.225–7012 Preference for certain domestic commodities.

* * * * *

Preference for Certain Domestic Commodities (Sept. 1997)

(a) * * *

(10) Any item of individual equipment (Federal Supply Class 8465) manufactured from or containing such fibers, yarns, fabrics, or materials.

(b) * * *

(4) To purchase of fibers and yarns that are for use in synthetic fabric or coated synthetic fabric (but not the purchase of the synthetic or coated synthetic fabric itself), if such fabric is to be used as a component of an end item that is not a textile product. Examples of textile products, made in whole or in part of fabric, include—

(i) Draperies, floor coverings, furnishings, and bedding (Federal Supply Group 72, Household and Commercial Furnishings and Appliances);

(ii) Items made in whole or in part of fabric in Federal Supply Group 83, Textile/leather/furs/apparel/findings/tents/flags, or Federal Supply Group 84, Clothing, Individual Equipment and Insignia;

(iii) Upholstered seats (whether for household, office, or other use); and

(iv) Parachutes (Federal Supply Class 1670).

(End of clause)

[FR Doc. 97–23658 Filed 9–5–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Part 231

[DFARS Case 95–D714]

Defense Federal Acquisition Regulation Supplement; Cost Principles

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DRARS) to implement provisions of the Federal Acquisition Streamlining Act of 1994 pertaining to legislative lobbying costs.

EFFECTIVE DATES: September 8, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra G. Haberlin, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax (703) 602–0350. Please cite DFARS Case 95–D714.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule implements Section 7202 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355). Section 7202 prohibits the expenditure of funds to assist any DoD contractor in preparing any material, report, list, or analysis, with respect to the actual or projected economic or employment impact in a particular State or congressional district of an

acquisition program for which all research, development, testing, and evaluation has not been completed.

A proposed rule was published on October 13, 1995 (60 FR 53320). No public comments were received. The final rule differs from the proposed rule by changing the statutory citation at 231.205–22 (a), 231.303(4), 231.603(2), and 231.703(2) from ''10 U.S.C. 2247'' to ''10 U.S.C. 2249.'' 10 U.S.C. 2247 was redesignated as 10 U.S.C. 2249 by Section 4321 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106).

B. Regulatory Flexibility Act

The Department of Defense certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities are awarded on a competitive fixed-price basis, and do not require application of the cost principle contained in this rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because this final rule does not impose any reporting or recordkeeping requirements that require Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 231

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 231 is amended as follows:

1. The authority citation for 48 CFR Part 231 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Section 231.205–22 is revised to read as follows:

231.205–22 Legislative lobbying costs.

(a) Preparing any material, report, list, or analysis on the actual or projected economic or employment impact in a particular State or congressional district of an acquisition program for which all research, development, testing, and evaluation has not been completed (10 U.S.C. 2249).

3. Section 231.303 is amended by adding paragraph (4) to read as follows:

231.303 Requirements.

* * * * *

(4) Under 10 U.S.C. 2249, the costs cited in 231.205–22(a) are unallowable.

4. Section 231.603 is amended by designating the existing text as paragraph (1), and by adding paragraph (2) to read as follows:

231.603 Requirements.

* * * * *

(2) Under 10 U.S.C. 2249, the costs cited in 231.205–22(a) are unallowable.

5. Section 231.703 is amended by designating the existing text as paragraph (1), and by adding paragraph (2) to read as follows:

231.703 Requirements.

* * * * *

(2) Under 10 U.S.C. 2249, the costs cited in 231.205–22(a) are unallowable.

[FR Doc. 97–23657 Filed 9–5–97; 8:45 am]

BILLING CODE 5000–04–M

Proposed Rules

Federal Register
Vol. 62, No. 173
Monday, September 8, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NORTHEAST DAIRY COMPACT COMMISSION

7 CFR Chapter XIII

Compact Over-Order Price Regulation

AGENCY: Northeast Dairy Compact Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Northeast Diary Compact Commission proposes to extend and to amend generally the current Compact Over-order Price Regulation, 7 CFR Chapter XIII, for the period January 1 through December 31, 1998. The current price regulation is in effect through December 31, 1997, applying to all Class I, fluid milk route distributions in the territorial region of the six New England states. The price regulation establishes a floor price of $16.94, which represents the monthly Federal Milk Market Order #1 Class I, Zone 1, price and the resulting compact ''over-order'' amount. The Commission submits the terms and substance of the Final rule which established the current price regulation as its proposed rule for purposes of public review and comment. (See 62 FR 29626, May 30, 1997.) A public hearing to take testimony and receive documentary evidence relevant to extending and amending generally the Compact Over-order Price Regulation will be held.

DATES: Written comments and exhibits may be submitted until 5:00 pm, October 8, 1997. The hearing will be held on September 24, 1997 at 10:00 a.m.

ADDRESSES: Send comments to: Northeast Dairy Compact Commission, 43 State Street, P.O. Box 1058, Montpelier, VT 05601. The hearing will be held at the Bektash Shrine Club Hall, 189 Pembroke Road, Concord, New Hampshire.

FOR FURTHER INFORMATION CONTACT: Daniel Smith, Executive Director, Northeast Dairy Compact Commission at the above address or by telephone at (802) 229–1941 or by facsimile at (802) 229–2028.

SUPPLEMENTARY INFORMATION:

I. Background

The Northeast Dairy Compact Commission (the ''Commission'') was established under authority of the Northeast Interstate Diary Compact (the ''Compact''). The Compact was enacted into law by each of the six participating New England states as follows: Connecticut—Pub. L. 93–320; Maine—Pub. L. 89–437, as amended, Pub. L. 93–247; Massachusetts—Pub. L. 93–370; New Hampshire—Pub. L. 93–336; Rhode Island—Pub. L. 93–106; Vermont—Pub. L. 89–95, as amended 93–57. In accordance with Article I, Section 10 of the United States Constitution, Congress consented to the Compact in Pub. L. 104–127 (FAIR Act), Section 147, codified at 7 U.S.C. 7156. Subsequently, the United States Secretary of Agriculture, pursuant to 7 U.S.C. 7256(1), authorized the implementation of the Compact.

Pursuant to its authority under Article V, Section 11 of the Compact, the Commission conducted an informal rulemaking proceeding to decide whether to adopt a Compact Over-order Price Regulation. See 62 FR 23032 (Apr. 28, 1997) (proposed rule). The Commission subsequently adopted a Compact Over-order Price Regulation effective July 1, 1997. See 62 FR 29696 (May 30, 1997). Pursuant to Section 12 and 13 of the Compact, the Commission conducted a producer referendum, which was approved. See 62 FR 29646 (May 30, 1997).

Pursuant to Article V, Section 11, the Commission is proposing to extend and amend generally the current Compact Over-order Price Regulation for a one year period beyond its current effective date of December 31, 1997. The current Compact Over-order Price Regulation is codified at 7 CFR §§ 1300 through 1308.1 The Commission submits the terms and substance of the final rule which established the current price regulation as its proposed rule for purposes of public review and comments. (See 62 FR 29626, May 30, 1997.)

II. Date, Time and Location of the Public Hearing

The Northeast Dairy Compact Commission will hold a public hearing on:

Wednesday, September 24, 1997 at 10:00 am at the Bektash Shrine Club Hall, 189 Pembroke Road, Concord, New Hampshire.

III. Request for Written Comments

Pursuant to Article VI(D) of the Commission's Bylaws, any person may participate in the rulemaking proceeding independent of the hearing process by submitting written comments and exhibits to the Commission. Comments and exhibits may be submitted at any time until 5:00 pm, October 8, 1997. Comments and exhibits will be made part of the record of the rulemaking proceeding if they identify the author's name, address and occupation, and if they include a sworn notarized statement indicating that the comment and/or exhibit is presented based upon the author's personal knowledge and belief. Facsimile copies will be accepted up until the 5:00 pm, October 8, 1997 deadline but the original copies must then be sent by ordinary mail.

Comments and exhibits should be sent to: Northeast Dairy Compact Commission, 43 State Street, P.O. Box 1058, Montpelier, VT 05601, (802) 229–2028 (fax).

For more information, contact a New England state department of agriculture or the Compact Commission offices—(802) 229–1941.

Dated September 2, 1997.

By authority of the Commission.

For the Commission.

Daniel Smith,

Executive Director.

[FR Doc. 97–23575 Filed 9–5–97; 8:45 am]

BILLING CODE 1650–01–P–M

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA12

Financial Crimes Enforcement Network; Proposed Amendments to the Bank Secrecy Act Regulations—Exemptions From the Requirement to Report Transactions in Currency—Phase II

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Financial Crimes Enforcement Network (''FinCEN'') is (i) proposing rules to further reform and

simplify the process by which banks may exempt transactions of retail and other businesses from the requirement to report transactions in currency in excess of $10,000, and (ii) restating generally, to reflect such changes, the text of the Bank Secrecy Act rule requiring the reporting by financial institutions of transactions in currency. The proposed changes would constitute a further step to achieve the reduction set by the Money Laundering Suppression Act of 1994 in the number of currency transaction reports required to be filed annually by depository institutions, as part of a continuing program to reduce unnecessary burdens imposed upon financial institutions by the Bank Secrecy Act and increase the cost-effectiveness of the counter-money laundering policies of the Department of the Treasury.

DATES: Written comments on all aspects of the proposal are welcome and must be received on or before December 8, 1997.

ADDRESSES: Written comments should be submitted to: Financial Crimes Enforcement Network, Department of the Treasury, 2070 Chain Bridge Road, Vienna, VA 22182.

Attention: NPRM—CTR Exemptions, Phase II. Comments also may be submitted by electronic mail to the following Internet address: ''regcomments@fincen.treas.gov'' with the caption in the body of the text, ''Attention: NPRM—CTR Exemptions, Phase II.'' For additional instructions on the submission of comments, see **SUPPLEMENTARY INFORMATION** under the heading ''Submission of Comments.''

Inspection of comments. Comments may be inspected at the Department of the Treasury between 10:00 a.m. and 4:00 p.m., in the FinCEN reading room, on the third floor of the Treasury Annex, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220. Persons wishing to inspect the comments submitted should request an appointment by telephoning (202) 622–0400.

FOR FURTHER INFORMATION CONTACT: Peter Djinis, Associate Director, FinCEN, (703) 905–3819; Charles Klingman, Financial Institutions Policy Specialist, FinCEN, (703) 905–3602; Stephen R. Kroll, Legal Counsel, Cynthia L. Clark, on detail to the Office of Legal Counsel, and Albert R. Zarate, Attorney-Advisor, Office of Legal Counsel, FinCEN, (703) 905–3590.

SUPPLEMENTARY INFORMATION:

I. Introduction

This document contains a proposed rule that would amend 31 CFR 103.22 to (i) reform and simplify the process by which depository institutions[1] may exempt transactions involving retail and other businesses from the requirement to report transactions in currency in excess of $10,000, and (ii) restate generally, to reflect the proposed changes to the administrative exemption system, the general requirement for financial institutions to report transactions in currency. The proposed changes are designed to implement the terms of 31 U.S.C. 5313(e) (and related provisions of 31 U.S.C. 5313 (f) and (g)), which were added to the Bank Secrecy Act by section 402(a) of the Money Laundering Suppression Act of 1994 (the ''Money Laundering Suppression Act''), Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325 (September 23, 1994).

II. Background

A. Statutory Provisions

The Bank Secrecy Act, Titles I and II of Pub. L. 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330, authorizes the Secretary of the Treasury, *inter alia*, to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, and to implement counter-money laundering programs and compliance procedures. Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311–5330) appear at 31 CFR Part 103. The authority of the Secretary to administer Title II of the Bank Secrecy Act has been delegated to the Director of FinCEN.

The reporting by financial institutions of transactions in currency in excess of $10,000 has long been a major component of the Department of the Treasury's implementation of the Bank Secrecy Act. The reporting requirement is imposed by 31 CFR 103.22, a rule issued under the broad authority granted to the Secretary of the Treasury by 31 U.S.C. 5313(a) to require reports of domestic coins and currency transactions.

Four new provisions (31 U.S.C. 5313 (d) through (g)) concerning exemptions were added to 31 U.S.C. 5313 by the Money Laundering Suppression Act. 31 U.S.C. 5313(d) provides that the Secretary of the Treasury shall exempt a depository institution from the requirement to report currency transactions with respect to transactions between the depository institution and four categories of bank customer. The requirements of that subsection are reflected in the terms of 31 CFR 103.22(h), which became effective, as an interim rule (the ''Interim Rule''), with respect to transactions in currency after April 30, 1996, *see* 61 FR 18204 (April 24, 1996), and is being published as a final rule elsewhere in today's edition of the **Federal Register**.[2]

31 U.S.C. 5313(e) authorizes the Secretary of the Treasury to exempt a depository institution from the requirement to report transactions in currency between a depository institution and a qualified business customer of the institution. Subsection (e)(2) defines a ''qualified business customer'' as a business which

(A) Maintains a transaction account (as defined in section 19(b)(1)(C) of the Act) at the depository institution;

(B) Frequently engages in transactions with the depository institution which are subject to the reporting requirements of subsection (a); and

(C) Meets criteria which the Secretary determines are sufficient to ensure that the purposes of this subchapter are carried out without requiring a report with respect to such transactions.

Subsection (e)(3) provides that the Secretary of the Treasury shall establish, by regulation, the criteria for granting and maintaining an exemption under subsection (e)(1).

Subsection (e)(4)(A) provides that the Secretary of the Treasury shall establish guidelines for depository institutions to follow in selecting customers for an exemption under this subsection. Under subsection (e)(4)(B), those guidelines may include a description of the type of businesses for which no exemption will be granted under this subsection.

Subsection (e)(5) provides that the Secretary of the Treasury shall prescribe regulations requiring each depository institution to

(A) Review, at least once each year, the qualified business customers of such institution with respect to whom an exemption has been granted under this subsection; and

(B) Upon the completion of such review, resubmit information about such customers, with such modifications as the institution determines to be appropriate, to the Secretary for the Secretary's approval.

Subsection (e)(6) states that during the two-year period beginning on the date of enactment of the Money Laundering Suppression Act, the discretionary

[1] As explained below, the text of the rule itself uses the term ''bank,'' which, as defined in 31 CFR 103.11(c), includes both banks and other classes of depository institutions.

[2] Although the Interim Rule is today being amended and reissued as a final rule, it is referred to in this document as the Interim Rule for ease of reference.

exemption rules shall be applied by the Secretary of the Treasury on the basis of such criteria as the Secretary determines to be appropriate to achieve an orderly implementation of the requirements of this subsection. Subsection (f) places limits on the liability of a depository institution in connection with a transaction that has been exempted from reporting under either 31 U.S.C. 5313(d) or (e) and provides for the coordination of any exemption with other Bank Secrecy Act provisions, especially those relating to the reporting of suspicious transactions. New subsection (g) defines ''depository institution'' for purposes of the new exemption provisions.

Section 402(b) of the Money Laundering Suppression Act states simply that in administering the new statutory exemption provisions:

> the Secretary of the Treasury shall seek to reduce, within a reasonable period of time, the number of reports required to be filed in the aggregate by depository institutions pursuant to section 5313(a) of title 31 * * * by at least 30 percent of the number filed during the year preceding [September 23, 1994,] the date of enactment of [the Money Laundering Suppression Act].

B. Shortcomings of the Administrative Exemption System

The enactment of 31 U.S.C. 5313 (d) through (g) reflects a Congressional intention to ''reform * * * the procedures for exempting transactions between depository institutions and their customers.'' *See* H.R. Rep. 103–652, 103d Cong., 2d Sess. 186 (August 2, 1994). The administrative exemption procedures at which the statutory changes are directed are found in 31 CFR 103.22 (b)(2) and (c) through (f); those procedures have not succeeded in eliminating the reporting of routine currency transactions by businesses.

Several reasons have been given for this lack of success. The first is the retention by banks of liability for making incorrect exemption determinations. The second is the complexity of the administrative exemption procedures (which require banks, for example, to assign dollar limits to each exemption based on the amounts of currency projected to be needed for the customary conduct of the exempt customer's lawful business, and which increase the risk of liability for the bank). Finally, advances in technology have made it less costly for some banks to report all currency transactions rather than to incur the administrative costs (and risks) of exempting customers and then administering the terms of particular exemptions properly.

The problems created by the administrative exemption system also include that system's failure to provide the Treasury with information needed for thoughtful administration of the Bank Secrecy Act. Although banks are required to maintain a centralized list of exempt customers and to make that list available upon request, *see* 31 CFR 103.22 (f) and (g), there is no way short of a bank-by-bank request for lists (with the time and cost such a request would entail both for banks and government) for Treasury to learn the extent to which routine transactions are effectively screened out of the system or (for that matter) the extent to which exemptions have been granted in situations in which they are not justified.

In crafting the 1994 statutory provisions relating to mandatory and discretionary exemptions, Congress sought to alter the burden of liability and uncertainty that the administrative exemption system created. The statutory provisions embraced several categories of transactions that were either already partially exempt or plainly eligible for exemption under the administrative exemption system.[3]

C. Objectives of Proposed Changes

The changes proposed in this document represent the next step in the use of section 402 of the Money Laundering Suppression Act to transform the Bank Secrecy Act provisions relating to currency transaction reporting. The goal of FinCEN's work in this area, like the Congress' goal in shaping the Money Laundering Suppression Act provisions on exemptions, is to reduce the cost of compliance with, and to further a fundamental restructuring of, the Bank Secrecy Act. The restructuring emphasizes cost-effective collection of only that information that is likely to benefit law enforcement and regulatory authorities. *See* 61 FR 18205.

Because this notice builds upon the provisions of the Interim Rule, its scope and intention must be considered against the background of the Interim Rule, whose terms are now found in 31 CFR 103.22(h). That rule creates a streamlined exemption procedure eliminating from reporting transactions in currency between banks and (i) other banks operating in the United States; (ii) government departments and agencies, and entities that exercise governmental authority; (iii) companies listed on certain national stock exchanges; and (iv) certain subsidiaries of those listed companies. As FinCEN explained when the Interim Rule was published, the currency transactions of bank customers in those categories are either required to be exempt from reporting by statute, were already effectively exempt from reporting under the terms of 31 CFR 103 or, in the case of listed companies and certain of their subsidiaries, are enterprises whose routine currency transaction reports are of little or no value to law enforcement officials.

The task of this second stage reform of the exemption system is to provide a similar blanket relief, to the extent possible, to those categories of business enterprise of all sizes that cannot easily be described in a single phrase and that are not subject to the sorts of regulatory and market place oversight that shape the environment of public companies. In accomplishing that task, FinCEN has attempted to pare down the existing exemption system, while still providing federal authorities with the tools to monitor and prevent abuse of the reformed exemption system.

III. Specific Provisions

A. Overview

Eliminating the administrative exemption system in section 103.22 requires the deletion of the bulk of that section, paragraphs (b)–(g). Because that is so, and because the structure and many of the rules of section 103.22(h) also apply to the proposed reformed exemption system for other customers, the proposed rule completely restates section 103.22 so that its terms may be presented clearly. With two exceptions—the treatment of the Postal Service and the treatment of recordkeeping facilities of a financial institution[4]—the restatement does not involve any change to, or an intention to open for comment, the terms of section 103.22 that do not relate to exemptions from the requirement to report transactions in currency. Certain provisions that have not been changed

[3] Thus, as noted below, transactions in currency between domestic banks are already exempt from reporting, *see* 31 CFR 103.22(b)(1)(ii), and ''[d]eposits or withdrawals, exchanges of currency or other payments and transfers by local or state governments, or the United States or any of its agencies or instrumentalities'' are one of the categories of transactions specifically described as eligible for exemption by banks. *See* 31 CFR 103.22(b)(2)(iii).

[4] Language has been added in proposed new paragraph (b), explicitly stating that the general obligation to report transactions in currency in excess of $10,000 does not apply to payments or transfers made solely in connection with the purchase of postage or philatelic products from the Postal Service. Language also has been added in proposed new paragraph (c), providing that a financial institution includes all of its domestic branch offices, and any recordkeeping facility for those offices, for purposes of the requirement to report transactions in currency.

have been moved for housekeeping purposes.

As discussed in more detail below, the changes proposed to be made by the rule are:

- Deletion of present paragraphs (b)–(g) of section 103.22;
- Redesignation of paragraph (h) of section 103.22 (the Interim Rule) as proposed new paragraph (d) in section 103.22;
- Addition of two new classes of ''exempt persons,'' namely, non-listed businesses and payroll customers, in proposed new paragraphs (d)(2)(vi) and (vii) of section 103.22;
- Addition of designation and annual filing rules for the exemption of non-listed companies and payroll customers, in proposed new paragraphs (d)(3)(iii) and (d)(4)(ii) of section 103.22;
- Addition of operating rules governing the exemption of non-listed businesses and payroll customers, in proposed new paragraphs (d)(5)(v)–(ix) of section 103.22; and
- Certain conforming changes to the structure of proposed new paragraph (d) (old section 103.22(h)).

For convenience, the proposed redistribution of the provisions of present section 103.22 may be summarized as follows:

DISTRIBUTION TABLE

Present 103.22	Proposed 103.22
No provision	103.22(a).
103.22(a)(1):	
Sentences 1–2	103.22(b)(1).
Sentences 3–4	103.22(c)(2).
103.22(a)(2)(i)–(ii)	103.22(b)(2).
103.22(a)(2)(iii)	103.22(c)(3).
103.22(a)(3)	Deleted in part; 103.22(c)(2).
103.22(a)(4)	103.22(c)(1).
103.22(b)	Deleted, except 103.22(b)(1)(iii) and 103.22(b)(2)(iv).
103.22(b)(1)(iii)	103.22(d)(1).
103.22(b)(2)(iv)	103.22(d)(2)(vii).
103.22(c)	Deleted.
103.22(d)	Deleted.
103.22(e)	Deleted.
103.22(f)	Deleted.
103.22(g)	Deleted.
103.22(h)(1) [5]	103.22(d)(1).
103.22(h)(2) (i)–(iii)	103.22(d)(2) (i)–(iii).
103.22(h)(2) (iv), (vi)	103.22(d)(2)(iv).
103.22(h)(2)(v)	103.22(d)(2)(v).
No provision	103.22(d)(2)(vi).
No provision	103.22(d)(2)(vii).
103.22(h)(3) (i)–(ii)	103.22(d)(3)(i).
103.22(h)(3)(iii)	103.22(d)(3)(ii).
103.22(h)(3)(iv)	103.22(d)(3)(i).
No provision	103.22(d)(3)(iii).
No provision	103.22(d)(4) (i)–(ii).
103.22(h)(4) (i)–(iv)	103.22(d)(5) (i)–(iv).
103.22(h)(4)(v)	103.22(d)(5)(x).
No provision	103.22(d)(5) (v)–(ix).
103.22(h)(5)	103.22(d)(6).
103.22(h)(6)(i)	103.22(d)(7)(i).
103.22(h)(6)(ii)	103.22(d)(7)(iii).
103.22(h)(6)(iii)	103.22(d)(7)(iv).
No provision	103.22(d)(7)(ii).
103.22(h)(7)	103.22(d)(8).
103.22(h)(8)	103.22(d)(9).
103.22(h)(9)	Deleted.

B. 103.22(a) General

Paragraph (a) describes generally the scope and organization of proposed restated section 103.22. The reporting obligations of financial institutions are restated in proposed paragraph (b). The rules covering aggregation for reporting purposes—i.e., rules relating to multiple branches of financial institutions and multiple transactions conducted by their customers—previously found in the third and fourth sentences of section 103.22(a)(1) and section 103.22(a)(4), are restated in proposed paragraph (c). The rules governing exemption by banks of transactions with certain customers, as noted, now appear in a single paragraph (d).

C. 103.22(b) Filing Obligations

Proposed paragraph (b) contains the blanket statement of the obligation of financial institutions to report transactions in currency in excess of $10,000. As is the case in the present rule, a separate statement is made of the obligations of casinos.

The only change in reporting obligations that appears in proposed paragraph (b) relates to the Postal Service. The proposed paragraph makes it clear that the general obligation to report transactions in currency in excess of $10,000 does not apply to payments or transfers made solely in connection

[5] All references to paragraph (h) of section 103.22 are to the final rule that appears elsewhere in today's edition of the **Federal Register**.

with the purchase of postage or philatelic products from the Postal Service; the change reflects a proposed amendment to the treatment of the Postal Service, for purposes of the Bank Secrecy Act, that was published as part of a set of proposed rules relating to money services businesses (''MSBs) on May 21, 1997. *See* 62 FR 27890.

Comments are specifically requested on the interplay between the ineligible businesses listed in proposed paragraph (d)(5)(viii) and the proposed definitions of MSBs set forth in the proposed rules that were published in the **Federal Register** on May 21, 1997. FinCEN recognizes that the application of the two sets of proposed rules (exemptions and MSBs) may present special difficulties in the case of, for example, grocery stores that also sell money services products. FinCEN, therefore, would welcome suggestions regarding ways of preventing the application of the proposed definition of money services businesses to a portion of those grocery stores' business activities from disqualifying such stores from consideration as exempt persons for non-money services businesses activities. FinCEN also would welcome comments on ways to shorten the list of ineligible businesses, given the money services businesses registration and the annual aggregate currency reporting requirement.

D. 103.22(c) Aggregation

Proposed new paragraph (c) restates the reporting rules applicable to multiple branches of financial institutions and multiple transactions of their customers. Those rules now appear in paragraphs (a)(1) and (a)(4) of section 103.22. As an analogue to a change, discussed below, that will permit affiliated banks to make a single designation of each exempt person, one change is proposed to the rules relating to aggregation. That change would add language to make it clear that for purposes of the currency transaction reporting requirements, a financial institution includes not only all domestic branch offices, but also any recordkeeping facility, wherever located, that contains records relating to the transactions of the institution's domestic branch offices.

E. 103.22(d) Transactions of Exempt Persons

1. General

As noted above, proposed paragraph (d) of section 103.22 is a restatement and further amendment of the exemption system provided in paragraph (h) of section 103.22. That paragraph was drafted not only to provide the first stage of regulatory relief contemplated by the Money Laundering Suppression Act amendments to 31 U.S.C. 5313, but also to provide a structure into which the terms of the second stage of relief would conveniently fit.

2. New Classes of Exempt Person

Proposed paragraphs (d)(2) (vi) and (vii) introduce two new classes of exempt persons, ''non-listed businesses'' and ''payroll customers.''

Non-listed businesses. The definition of non-listed business is an attempt to summarize, in a single sentence, all commercial enterprises with a recurring need to deal with currency that are not listed companies or their subsidiaries. Thus, every enterprise that might have been eligible for either a ''unilateral'' or ''special'' exemption under the superseded exemption system (and that is not already treated as an exempt person by the Interim Rule) will now become eligible for exemption under the terms of the new rule, by banks themselves, if such person has been a bank customer for 12 months. There will be no provision for applications to the Detroit Computing Center or elsewhere for authority to recognize an exemption for a particular customer. Transactions by certain customers, listed in proposed paragraph (d)(5)(viii), remain ineligible for exemption.

Proposed paragraph (d)(2)(vi)(A) requires that any business must have been a bank customer for 12 months before it is eligible for exemption as a non-listed business. That period is 10 months longer than the present 60 day minimum period specified in the administrative practice that has grown up around section 103.22(b) (2) and (d). The difference is justified, in FinCEN's view, by the elimination of virtually all of the other requirements of the present system.

The limitations on the scope of the non-listed business definition, contained in proposed new paragraphs (d)(2)(vi)(B)–(C), are straightforward. They confine permissible exemptions to bank customers with transaction account relationships with the exempting bank and recurring use of currency, as required by 31 U.S.C. 5313(e)(2).

Payroll Customer. The definition of payroll customer reflects, for the most part, the terms of present paragraph 103.22(b)(2)(iv), and tracks the format proposed above when defining a non-listed business. Proposed paragraph (d)(2)(vii)(A) requires that any person must have been a bank customer for at least 12 months before it is eligible for exemption as a payroll customer. Proposed new paragraphs (d)(2)(vii)(B)–(C) further confine permissible exemptions to bank customers who regularly withdraw more than $10,000 to pay their United States employees in currency and are United States residents.

3. Special Requirements for Exemption of Non-Listed Businesses and Payroll Customers.

There are three special requirements for the recognition of the exemption of non-listed businesses and payroll customers as exempt persons:

- Filing of an ''Designation of Exempt Person'' form (as in the case of all other classes of exempt persons);
- Inclusion on the designation form of a projection of the exempt person's annual currency needs; and
- An annual filing confirming continuation of the exempt person's status as such, listing the aggregate currency deposited and withdrawn by the person during the year in question and any changes of which the bank knows (or should know on the basis of its records) in the ownership or control of the exempt person.

Before briefly discussing the latter two requirements, it is appropriate to note what the proposed rule would eliminate from the administrative exemption system. There would no longer be any cash limits or ''permitted ranges'' for exempt transactions; a customer that is exempt is, simply, exempt for all purposes, with respect to the currency transaction reporting requirement (although not with respect to the suspicious transaction reporting or other Bank Secrecy Act requirements). There is also no longer any requirement for submission and signature of exemption statements, or for a mandatory exemption list. (The operating rules of paragraph (d)(5), noted below, make further changes in the exemption system in areas for which banks have long requested relief.)

The purpose of the extensive changes made to the exemption system by the proposed rule—following upon the changes already made to that system by the Interim Rule—is to make it as simple and cost-effective as possible for banks to eliminate the burdens of currency transaction reporting for legitimate customers. Any simplified system can potentially be manipulated by criminals seeking to hide the movement of illegally-obtained currency, despite the best efforts of conscientious bank officials. The proposed requirement that banks initially estimate, and then report annually, the gross totals of currency

transactions of exempted non-listed customers is designed simply to prevent such unlawful manipulation of the greatly liberalized and simplified exemption system.[6] Even under that simplified system, banks would remain subject to the suspicious activity reporting requirements of 31 CFR 103.21, as well as similar reporting requirements imposed by federal bank supervisory agencies. *See also* 12 CFR 21.11 (Office of the Comptroller of the Currency); 12 CFR 208.20 (Federal Reserve System); 12 CFR 353.3 (Federal Deposit Insurance Corporation); 12 CFR 563.180 (Office of Thrift Supervision); 12 CFR 748.1 (National Credit Union Division). Thus, for example, a sharp increase from one year to the next in the gross total of currency transactions of its exempted customers, may trigger the obligation of a bank to file a suspicious activity report.

The need for some ''counterweight'' in the liberalized system was raised forcefully with FinCEN by federal law enforcement officials during formulation of the proposed rule. Enforcement officials are concerned that necessary easing of the burdens of unnecessary currency transaction reporting not have the unintended effect of opening up avenues for more efficient money laundering. Such avenues could exist if the new rules made it possible for criminals to siphon illegally-obtained currency into the daily currency deposits of small businesses in amounts that would not individually attract attention but that in the aggregate produce a steady flow of laundered funds into the banking system.[7] The possibility becomes more serious in the case of businesses that maintain accounts at multiple banks, no one of which has a complete picture of the business's currency transaction history or banking needs.

That the administrative exemption system's attempt to prevent criminals from hiding within the folds of the exemption system has proved both ineffective and burdensome does not eliminate the need to build cost-effective barriers to abuse into the liberalized system. A simple annual reporting rule has many benefits in this regard.

At the same time, FinCEN is aware that a requirement for cumulation and annual reporting of gross currency transactions may go beyond the data processing capabilities of some bank systems. More important, it is aware of the need to reach a thoughtful balance between liberalization and anti-abuse provisions if the changed exemption system is to accomplish its paramount objective of providing a cost-effective way to eliminate unnecessary filings from the currency transactions reporting system. Thus, it invites suggestions about alternate ways to structure anti-manipulation provisions. In that connection, commenters are asked to consider the following alternatives:

1. *Annual Reporting in Ranges of Value.* There is no requirement that annual cumulative currency transaction totals be absolutely precise. It would be sufficient if the annual reporting, and initial correlative estimation of business cash needs, be made in ranges, and the rule could so state. Thus, for example, totals might simply be reported in $25,000, $50,000, or even $100,000 increments in order to accomplish the purposes of cumulation. Such a change would eliminate the concern and cost of pinpoint recordkeeping in this instance.

2. *Reporting of Running Totals, rather than Annual Cumulation.* Running totals might be reported on other than an annual basis, so that government computers could perform the necessary cumulation. A bank that normally deleted in currency ledgers at the end of each calendar quarter, for example, might then electronically transfer the necessary data to FinCEN without having to build a new system, or new storage capacity to accommodate annual recordkeeping.

3. *Limited Annual Reporting.* Cumulation requirements might be limited to businesses of certain sizes or types.

In considering approaches other than cumulative currency transaction totals, commenters should be aware that a primary purpose of the proposed rule's anti-manipulation provisions is to limit the amount of judgment banks must make about the meaning of variations in a customer's currency transaction totals. While significant spikes or variations in simple total volume could well implicate the suspicious transaction reporting rules in appropriate cases, the anti-abuse purpose of the cumulative reporting requirement (or any substitute that might be adopted) is to create a buttress or second line of support for the bank's own efforts and to avoid placing all of the pressure for preventing abuses of the currency transaction reporting exemptions on bank officials themselves.

The success of the proposed liberalization of the currency transaction reporting exemption rules in practice will depend in part upon the receptiveness to the new procedures taken by federal bank examiners. FinCEN is planning a program to familiarize examiners with both the letter and the spirit of the new rules, and it would appreciate comments on the sorts of issues that should be raised with examiners during the course of that program.

4. *New Operating Rules.* Six new operating rules are proposed to be added to further simplify the exemption process.

a. Proposed paragraph (d)(5)(v) requires the bank to aggregate all customer accounts to apply the exemption provisions to that customer. Thus, the bank is obligated, under the proposed rule, to exempt a customer on a bank-wide basis and to count all accounts to determine, for example, whether a customer's cash withdrawals or deposits exceed $10,000. Thus, exemptions will no longer be determined on an account by account basis, but rather on a bank-wide basis. Generally, FinCEN believes that each customer possesses its own Employee Identification Number (''EIN''); thus, this proposed rule does not cover customer accounts with multiple EINs. Comments are welcomed on this topic.

b. Proposed paragraph (d)(5)(vi) will permit affiliated banks to make a single designation of exempt person, that will apply to all accounts at all banks within the affiliated group; annual currency transaction totals, for the moment at least, will still have to be computed on a bank-by-bank basis.

c. Proposed paragraph (d)(5)(vii) will permit sole proprietors to continue to be eligible for exemption, so long as personal and business funds are not commingled in the same accounts. FinCEN invites comments on whether this prohibition against commingling will be burdensome for banks to implement.

d. Proposed paragraph (d)(5)(viii) contains a list of businesses that may not be exempted under the new rules as non-listed companies (although they may qualify for exemption under the more limited payroll customer definition, for the purposes permitted by that definition). A limitation of this kind on the new procedures is explicitly contemplated by the terms of 31 U.S.C. 5313(e)(4)(B); the businesses described are essentially the same as the groups of businesses that are not permitted to be

[6] The customer statement and dollar limitation provisions that the proposed rule would eliminate were designed—however imperfectly—to limit manipulation of the exemption procedures then in force.

[7] Cash intensive money services business—e.g., currency exchanges—have been identified in a number of investigations as affording just such an opportunity for money launderers, a fact that contributes to the exclusion of money services businesses from eligibility for treatment as non-listed businesses eligible for exemption.

granted an exemption under the present system.

The proposed rule is, at present, silent about the treatment of businesses with multiple activities of which one is an activity for which an exemption is barred. FinCEN solicits comments on ways to deal with that issue.

e. Proposed paragraph (d)(5)(ix) defines a transaction account for purposes of proposed paragraph (d) as any account described in section 19(b)(1)(C) of the Act, 12 U.S.C. 461(b)(1)(C). This definition does not include any other accounts not described in 12 U.S.C. 461(b)(1)(C), such as money market accounts. Thus, the definition of a transaction account in the proposed rule is narrower than the definition of the same term that is set forth at 31 CFR 103.11(hh). Proposed paragraph (d)(5)(ix) also provides that a person may be exempt either as a non-listed business or as a payroll customer only to the extent of such person's transaction accounts.

f. Proposed paragraph (d)(5)(x) defines an established depositor for purposes of proposed paragraph (d) of this section as any person that has maintained a transaction account at the bank for at least 12 months. This definition is consistent with proposed paragraph (d)(2)(vi)(A), which requires that a business maintain a transaction account at the bank for at least 12 months before it may be exempted as a non-listed business.

Submission of Comments

An original and four copies of any comment (except those sent electronically) must be submitted. All comments will be available for public inspection and copying, and no material in any such comments, including the name of any person submitting comments, will be recognized as confidential. Accordingly, material not intended to be disclosed to the public should not be submitted.

Proposed Effective Date

The amendments to 31 CFR Part 103 contained in this notice of proposed rulemaking will become effective 30 days following the publication in the **Federal Register** of the final rule to which this notice of proposed rulemaking relates.

Executive Order 12866

The Department of the Treasury has determined that this proposed rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), Pub. L. 104–4 (March 22, 1995), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under section 202 and has concluded that on balance this notice of proposed rulemaking provides the most cost-effective and least burdensome alternative to achieve the objectives of the rule.

Regulatory Flexibility Act

FinCEN certifies that this proposed amendment to the regulations implementing the Bank Secrecy Act will not have a significant, adverse financial impact on a substantial number of small depository institutions.

Paperwork Reduction Act

In accordance with requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*, and its implementing regulations, 5 CFR Part 1320, the following information concerning the collection of information on Internal Revenue Service Form 4789 is presented to assist those persons wishing to comment on the information collection.

FinCEN anticipates that this proposed rule, if made effective as proposed, would result in at least a 2 million reduction in the number of currency transaction reports required to be filed annually, and a cost reduction to banks of $16 million. FinCEN believes that these estimated reductions are reasonable, and probably conservative.

Title: Currency Transaction Report.

OMB Number: 1506–0005.

Description of Respondents: All financial institutions, except casinos.

Estimated Number of Respondents: 250,000.

Frequency: As required.

Estimate of Burden: Reporting average of 19 minutes per response; recordkeeping average of 5 minutes per response.

Estimate of Total Annual Burden on Respondents: 10,000,000 responses. Reporting burden estimate = 3,166,667 hours; recordkeeping burden estimate = 833,333 hours. Estimated combined total of 4,000,000 hours.

Estimate of Total Annual Cost to Respondents for Hour Burdens: Based on $20 per hour, the total cost to the public is estimated to be $80,000,000.

Estimate of Total Other Annual Costs to Respondents: None.

Type of Review: Extension.

FinCEN specifically invites comments on the following subjects: (a) whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

In addition, the Paperwork Reduction Act of 1995 requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. Thus, FinCEN also specifically requests comments to assist with this estimate. In this connection, FinCEN requests commenters to identify any additional costs associated with the completion of the form. These comments on costs should be divided into two parts: (1) any additional costs associated with reporting; and (2) any additional costs associated with recordkeeping.

In accordance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, and its implementing regulations, 5 CFR 1320, the following information concerning the collection of information as required by 31 CFR 103.22 is presented to assist those persons wishing to comment on the information collection.

FinCEN anticipates that this proposed rule, if enacted as proposed, would result in a reduction in hours spent complying with exemption requirements of 350,000 hours, and a reduction in cost to banks of $7,500,000. This is a conservative estimate, based on comments and discussions with banking industry representatives of the cost of complying with the administrative exemption system requirements.

Title: Currency transaction reporting exemption recordkeeping (31 CFR 103.22).

OMB Number: 1506–0006.

Description of Respondents: All banks.

Estimated Number of Respondents: 19,000.

Frequency: As required.

Estimate of Burden: Recordkeeping average of 2 hours per response.

Estimate of Total Annual Burden on Respondents: 25,000. Recordkeeping burden estimate = 50,000 hours.

Estimate of Total Annual Cost to Respondents for Hour Burdens: Based on $20 per hour, the total cost to the public is estimated to be $1,000,000.

Estimate of Total Other Annual Costs to Respondents: None.

Type of Request: Extension.

FinCEN specifically invites comments on the following subjects: (a) whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

In addition, the Paperwork Reduction Act of 1995 requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. Thus, FinCEN also specifically requests comments to assist with this estimate. In this connection, FinCEN requests commenters to identify any additional costs associated with the completion of the form. These comments on costs should be divided into two parts: (1) any additional costs associated with reporting; and (2) any additional costs associated with recordkeeping.

Comments may be submitted to FinCEN, at the address specified at the beginning of this document, *Attention:* Paperwork Reduction Act.

Responses to this request for comments under the Paperwork Reduction Act will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record.

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Banks and banking, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Law enforcement, Penalties, Reporting and recordkeeping requirements, Securities, Taxes.

Amendment

For the reasons set forth above in the preamble, 31 CFR Part 103 is proposed to be amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for Part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

2. Section 103.22 is revised to read as follows:

§ 103.22 Reports of Transactions in Currency.

(a) *General.* This section 103.22 sets forth the rules for the reporting by financial institutions of transactions in currency. The reporting obligations themselves are stated in paragraph (b). The reporting rules relating to aggregation are stated in paragraph (c). Rules permitting banks to exempt certain transactions from the reporting obligations appear in paragraph (d).

(b) *Filing obligations*—(1) *Financial institutions other than casinos.* Each financial institution other than a casino shall file a report of each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to such financial institution which involves a transaction in currency of more than $10,000, except as otherwise provided herein. In the case of the Postal Service, the obligation contained in the preceding sentence shall not apply to payments or transfers made solely in connection with the purchase of postage or philatelic products.

(2) *Casinos.* Each casino shall file a report of each transaction in currency, involving either cash in or cash out, of more than $10,000.

(i) Transactions in currency involving cash in include, but are not limited to:

(A) Purchases of chips, tokens, and plaques;

(B) Front money deposits;

(C) Safekeeping deposits;

(D) Payments on any form of credit, including markers and counter checks;

(E) Bets of currency;

(F) Currency received by a casino for transmittal of funds through wire transfer for a customer;

(G) Purchases of a casino's check; and

(H) Exchanges of currency for currency, including foreign currency.

(ii) Transactions in currency involving cash out include, but are not limited to:

(A) Redemptions of chips, tokens, and plaques;

(B) Front money withdrawals;

(C) Safekeeping withdrawals;

(D) Advances on any form of credit, including markers and counter checks;

(E) Payments on bets, including slot jackpots;

(F) Payments by a casino to a customer based on receipt of funds through wire transfer for credit to a customer;

(G) Cashing of checks or other negotiable instruments;

(H) Exchanges of currency for currency, including foreign currency; and

(I) Reimbursements for customers' travel and entertainment expenses by the casino.

(c) *Aggregation*—(1) *Multiple branches.* A financial institution includes all of its domestic branch offices, and any recordkeeping facility, wherever located, that contains records relating to the transactions of the institution's domestic branch offices, for purposes of this section's reporting requirements.

(2) *Multiple transactions—general.* In the case of financial institutions other than casinos, for purposes of this section, multiple currency transactions shall be treated as a single transaction if the financial institution has knowledge that they are by or on behalf of any person and result in either cash in or cash out totalling more than $10,000 during any one business day (or in the case of the Postal Service, any one day). Deposits made at night or over a weekend or holiday shall be treated as if received on the next business day following the deposit.

(3) *Multiple transactions—casinos.* In the case of a casino, multiple currency transactions shall be treated as a single transaction if the casino has knowledge that they are by or on behalf of any person and result in either cash in or cash out totalling more than $ 10,000 during any gaming day. For purposes of this paragraph (c)(3), a casino shall be deemed to have the knowledge described in the preceding sentence, if: any sole proprietor, partner, officer, director, or employee of the casino, acting within the scope of his or her employment, has knowledge that such multiple currency transactions have occurred, including knowledge from examining the books, records, logs, information retained on magnetic disk, tape or other machine-readable media, or in any manual system, and similar documents and information, which the casino maintains pursuant to any law or regulation or within the ordinary course of its business, and which contain information that such multiple currency transactions have occurred.

(d) *Transactions of exempt persons*—(1) *General.* No bank is required to file a report otherwise required by paragraph (b) of this section with respect to any transaction in currency between an exempt person and such bank, or, to the extent provided in paragraph (d)(5)(vi) of this section, between such exempt person and other banks affiliated with such bank. In addition, a non-bank financial institution is not required to file a report otherwise required by paragraph (b) of this section with respect to a transaction in currency between the institution and a commercial bank. (A limitation on the exemption described in this paragraph (d)(1) is set forth in (d)(6) of this section.)

(2) *Exempt person.* For purposes of this section, an exempt person is:

(i) A bank, to the extent of such bank's domestic operations;

(ii) A department or agency of the United States, of any state, or of any political subdivision of any state;

(iii) Any entity established under the laws of the United States, of any state, or of any political subdivision of any state, or under an interstate compact between two or more states, that exercises governmental authority on behalf of the United States or any such state or political subdivision;

(iv) Any entity, other than a bank, whose common stock or analogous equity interests are listed on the New York Stock Exchange or the American Stock Exchange or whose common stock or analogous equity interests have been designated as a Nasdaq National Market Security listed on the Nasdaq Stock Market (except stock or interests listed under the separate ''Nasdaq Small-Cap Issues'' heading), provided that, for purposes of this paragraph (d)(2)(iv), a person that is a financial institution, other than a bank, is an exempt person only to the extent of its domestic operations;

(v) Any subsidiary, other than a bank, of any entity described in paragraph (d)(2)(iv) of this section (a ''listed entity'') that is organized under the laws of the United States or of any state and at least 51 per cent of whose common stock is owned by the listed entity, provided that, for purposes of this paragraph (d)(2)(v), a person that is a financial institution, other than a bank, is an exempt person only to the extent of its domestic operations;

(vi) To the extent of its domestic operations, any other commercial enterprise (for purposes of this paragraph (d), a ''non-listed business''), other than an enterprise specified in paragraph (d)(5)(viii), that

(A) Has maintained a transaction account at the bank for at least 12 months,

(B) Frequently engages in transactions in currency with the bank in excess of $10,000, and

(C) Is incorporated or organized under the laws of the United States or a State, or is registered as and eligible to do business within a State; and

(vii) With respect solely to withdrawals for payroll purposes from existing transaction accounts, any other person (for purposes of this paragraph (d), a ''payroll customer'') who

(A) Has maintained a transaction account at the bank for at least 12 months,

(B) Operates a firm that regularly withdraws more than $10,000 in order to pay its United States employees in currency, and

(C) Is a United States resident.

(3) *Initial designation of exempt persons.* (i) *General.* A bank must designate each exempt person with whom it engages in transactions in currency by the close of the 30-day period beginning after the day of the first reportable transaction in currency with that person sought to be exempted from reporting under the terms of paragraph (d) of this section. Except where the person sought to be exempted is another bank as described in paragraph (d)(2)(i) of this section, a non-listed business as described in paragraph (d)(2)(vi) of this section, or a payroll customer as described in paragraph (d)(2)(vii) of this section, designation by such bank of such exempt person shall be made by a single filing of Internal Revenue Service Form 4789, in which line 36 is marked ''Designation of Exempt Person'' and items 2–14 (Part I, Section A) and items 37–49 (Part III) are completed, or by filing any form specifically designated by FinCEN for this purpose. The designation must be made separately by each bank that treats the person in question as an exempt person, except as provided in paragraph (d)(5)(vi) of this section. The designation requirements of this paragraph (d)(3) apply whether or not the particular exempt person to be designated has previously been treated as exempt from the reporting requirements of § 103.22(a) under the rules contained in 31 CFR 103.22(b) through (g) (see 31 CFR chapter I revised as of July 1, 1997). A special transitional rule, which extends the time for initial designation for customers that have been previously treated as exempt, is contained in paragraph (d)(7)(ii) of this section.

(ii) *Special rules for banks.* When designating another bank as an exempt person, a bank must either make the filing required by paragraph (d)(3)(i) of this section or file, in such a format and manner as FinCEN may specify, a current list of its domestic bank customers. In the event that a bank files its current list of domestic bank customers, the bank must make the filing as described in paragraph (d)(3)(i) of this section for each bank that is a new customer and for which an exemption is sought under this paragraph (d).

(iii) *Special rules for non-listed businesses and payroll customers.* When designating a non-listed business or a payroll customer as an exempt person, a bank, in addition to the filing required by paragraph (d)(3)(i) of this section, shall include information, in such form as FinCEN shall determine, about such customer's projected annual currency deposits and withdrawals through all transaction accounts.

(4) *Annual filing with respect to certain exempt persons*—(i) *General.* No annual filing is required for continuation of the treatment as an exempt person of a customer described in paragraphs (d)(2) (i)–(v).

(ii) *Non-listed businesses and payroll customers.* The designation of a non-listed business or a payroll customer as an exempt person must be updated annually, beginning no later than February 28, 1999, and each February 28 thereafter, on such form as FinCEN shall specify. Annual updates must include a statement of the exempt person's annual currency deposits and withdrawals through all transaction accounts for the calendar year next preceding the date on which such filing is required, as well as information about any change in control of the exempt person involved of which the bank knows (or should know on the basis of its records).

(5) *Operating rules for designating exempt persons—(i) General rule.* Subject to the specific rules of this paragraph (d), a bank must take such steps to assure itself that a person is an exempt person (within the meaning of applicable provisions of paragraph (d)(2) of this section), and to document the basis for its conclusions and its compliance with the terms of this paragraph (d), that a reasonable and prudent bank would take and document to protect itself from loan or other fraud or loss based on misidentification of a person's status.

(ii) *Governmental departments and agencies.* A bank may treat a person as a governmental department, agency, or entity if the name of such person reasonably indicates that it is described in paragraph (d)(2)(ii) or (d)(2)(iii) of

this section, or if such person is known generally in the community to be a State, the District of Columbia, a tribal government, a Territory or Insular Possession of the United States, or a political subdivision or a wholly-owned agency or instrumentality of any of the foregoing. An entity generally exercises governmental authority on behalf of the United States, a State, or a political subdivision, for purposes of paragraph (d)(2)(iii) of this section, only if its authorities include one or more of the powers to tax, to exercise the authority of eminent domain, or to exercise police powers with respect to matters within its jurisdiction. Examples of entities that exercise governmental authority include, but are not limited to, the New Jersey Turnpike Authority and the Port Authority of New York and New Jersey.

(iii) *Stock exchange listings*. In determining whether a person is described in paragraph (d)(2)(iv) of this section, a bank may rely on any New York, American or Nasdaq Stock Market listing published in a newspaper of general circulation, on any commonly accepted or published stock symbol guide, on any information contained in the Securities and Exchange Commission ''Edgar'' System, or on any information contained on an Internet World-Wide Web site or sites maintained by the New York Stock Exchange, the American Stock Exchange, or the National Association of Securities Dealers.

(iv) *Listed company subsidiaries*. In determining whether a person is described in paragraph (d)(2)(v) of this section, a bank may rely upon:

(A) Any reasonably authenticated corporate officer's certificate;

(B) Any reasonably authenticated photocopy of Internal Revenue Service Form 851 (Affiliation Schedule) or the equivalent thereof for the appropriate tax year; or

(C) A person's Annual Report or Form 10–K, as filed in each case with the Securities and Exchange Commission.

(v) *Aggregated accounts*. In determining the qualification of a customer as an exempt person, a bank shall treat all transaction accounts of the customer as a single account, except as provided in paragraph (d)(5)(vii) of this section relating to sole proprietorships.

(vi) *Affiliated banks*. The designation required by this paragraph may be made by a parent bank holding company or one of its bank subsidiaries on behalf of all bank subsidiaries of the holding company, so long as the designation lists each bank subsidiary to which the designation shall apply. Projected and annual currency transaction activity must be listed in such affiliated group designation on a bank-by-bank basis.

(vii) *Sole proprietorships*. A sole proprietorship may be treated as a non-listed business if it otherwise meets the requirements of paragraph (d)(2)(vi) of this section, as applicable. In addition, a sole proprietorship may be treated as a payroll customer if it otherwise meets the requirements of paragraph (d)(2)(vii) of this section, as applicable. However, the exemption permitted by this paragraph applies only to business transactions of the sole proprietorship, not to personal transactions of the proprietor, and the sole proprietorship's accounts may not be aggregated with personal accounts of the proprietor for purposes of this paragraph (d). Thus, no exemption may be granted to an account in which personal and sole proprietorship funds are commingled.

(viii) *Ineligible businesses*. A business engaged in one or more of the following activities may not be treated as a non-listed business for purposes of this paragraph (d): financial institutions or agents of financial institutions of any type; purchase or sale to customers of motor vehicles of any kind, vessels, aircraft, farm equipment or mobile homes; the practice of law, accountancy, or medicine; auctioning of goods; chartering or operation of ships, buses, or aircraft; gaming of any kind; investment advisory services or investment banking services; real estate brokerage; pawn brokerage; title insurance and real estate closing; trade union activities; and any other activities that may be specified, prospectively, by FinCEN by written notice published in the **Federal Register**.

(ix) *Transaction account*. A transaction account, for purposes of paragraph (d) of this section, is any account described in section 19(b)(1)(C) of the Federal Reserve Act, 12 U.S.C. 461(b)(1)(C). For purposes of paragraphs (d)(2)(vi) and (d)(2)(vii) of this section, a person is an exempt person only to the extent of such person's transaction accounts.

(x) *Documentation*. The records maintained by a bank to document its compliance with and administration of the rules of this paragraph (d) shall be maintained in accordance with the provisions of section 103.38.

(6) *Limitation on exemption*. A transaction carried out by an exempt person as an agent for another person who is the beneficial owner of the funds that are the subject of a transaction in currency is not subject to the exemption from reporting contained in paragraph (d)(1) of this section.

(7) *Limitation on liability; transitional rule*. (i) No bank shall be subject to penalty under this subchapter for failure to file a report required by section 103.22(b) with respect to a transaction in currency by an exempt person with respect to which the requirements of this paragraph (d) have been satisfied, unless the bank:

(A) Knowingly files false or incomplete information with respect to the transaction or the customer engaging in the transaction, or

(B) Has reason to believe that the customer does not meet the criteria established by this paragraph (d) for treatment of the transactor as an exempt person or that the transaction is not a transaction of the exempt person.

(ii) If on [INSERT DATE 30 DAYS AFTER THE FINAL REGULATIONS TO WHICH THIS NOTICE OF PROPOSED RULEMAKING RELATES ARE PUBLISHED IN THE **Federal Register**] a bank treated a person as an exempt person under the rules contained in 31 CFR 103.22 (b)–(g) (July 1, 1996), the bank must designate that person as an exempt person under paragraph (d)(2) of this section (or cease to treat such person as exempt if such person does not qualify for treatment as an ''exempt person'' under paragraph (d)(2) of this section) not later than the end of the first calendar year beginning after [INSERT DATE 30 DAYS AFTER THE FINAL REGULATIONS TO WHICH THIS NOTICE OF PROPOSED RULEMAKING RELATES ARE PUBLISHED IN THE **Federal Register**]. Provided that the bank complies with the preceding sentence, the bank may treat such a customer as exempt from [INSERT DATE 30 DAYS AFTER THE DATE THE FINAL REGULATIONS TO WHICH THIS NOTICE OF PROPOSED RULEMAKING RELATES ARE PUBLISHED IN THE **Federal Register**]. The first annual currency report for a customer is not due until the end of the first year beginning after [INSERT DATE 30 DAYS AFTER THE FINAL REGULATIONS TO WHICH THIS NOTICE OF PROPOSED RULEMAKING RELATES ARE PUBLISHED IN THE **Federal Register**].

(iii) Absent specific knowledge of any information that would be grounds for revocation as provided in paragraph (d)(9) of this section, a bank is required to verify the status of those entities it has designated as exempt persons only once each year.

(iv) A bank that files a report with respect to a currency transaction by an exempt person rather than treating such person as exempt shall remain subject, with respect to each such report, to the rules for filing reports, and the penalties for filing false or incomplete reports that are applicable to reporting of

transactions in currency by persons other than exempt persons. A bank that continues for the period permitted by paragraph (d)(7)(ii) of this section to treat a person described in paragraph (d)(2) as exempt from the reporting requirements of section 103.22(a) on a basis other than as provided in this paragraph (d) shall remain subject to the rules governing an exemption on such other basis and to the penalties for failing to comply with the rules governing such other exemption.

(8) *Obligation to file suspicious activity reports, etc.* Nothing in this paragraph (d) relieves a bank of the obligation, or alters in any way such bank's obligation, to file a report required by section 103.21 with respect to any transaction, including any transaction in currency, or relieves a bank of any reporting or recordkeeping obligation imposed by this Part (except the obligation to report transactions in currency pursuant to this section to the extent provided in this paragraph (d)).

(9) *Revocation.* The status of any person as an exempt person under this paragraph (d) may be revoked by FinCEN by written notice, which may be provided by publication in the **Federal Register** in appropriate situations, on such terms as are specified in such notice. Without any action on the part of the Treasury Department and subject to the limitation on liability contained in paragraph (d)(7)(iii) of this section:

(i) The status of an entity as an exempt person under paragraph (d)(2)(iv) ceases once such entity ceases to be listed on the applicable stock exchange; and

(ii) The status of a subsidiary as an exempt person under paragraph (d)(2)(v) ceases once such subsidiary ceases to have at least 51 per cent of its common stock owned by a listed entity.

* * * * *

Dated: August 27, 1997.

Stanley E. Morris,

Director, Financial Crimes Enforcement Network.

[FR Doc. 97–23639 Filed 9–5–97; 8:45 am]

BILLING CODE 4820–03–P

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Danger Zones, Chesapeake Bay, Point Lookout to Cedar Point, Maryland

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on the Navy's proposal to amend the danger zone regulations, which establish an aerial firing range and target areas in the waters of the Chesapeake Bay. The purpose of the proposed amendments is to redesignate the aerial firing range as an aerial and surface firing range and to increase the Navy's use of the range from ''Monday through Saturday, except holidays'' to continuous use. The existing restricted area at the Hannibal Target encompasses a water area with a radius of 600 feet. The proposed change will increase the radius of the restricted area to 1,000 feet, prohibit entry into the area at all times and prohibit the public from climbing on the targets. These proposed changes are necessary to protect the public from hazardous conditions which may exist as a result of the Navy's use of this area. Other editorial amendments are made to reflect changes in the Navy's organization.

DATES: Comments should be submitted by October 8, 1997.

ADDRESSES: Send comments to: HQUSACE, CECW–OR, Washington, D.C. 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Elinsky at (410) 962–4503 or Mr. Ralph Eppard at (202) 761–1783.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps proposes to amend the regulations in 33 CFR Part 334.200. The Commanding Officer of the U.S. Naval Air Station, Patuxent River, Maryland has requested that the Corps amend the danger zone and restricted area regulations by redesignating the existing ''aerial firing range'' as an ''aerial and surface firing range'' and to increase the Navy's use of the range from ''Monday through Saturday, except national holidays'' to continuous use. The Navy also proposed to enlarge the existing restricted area at the Hannibal Target from a water area with a radius of 600 feet to a radius of 1,000 feet, and entry into the area is prohibited at all times. The restricted area is presently closed during daylight hours except to vessels authorized entry by the Navy Command. We are also adding a prohibition on climbing on the targets. These proposed changes are necessary to protect the public from hazardous conditions which may exist as a result of the Navy's use of this area. Enforcement of these regulations is being changed from the Commander of the Naval Air Test Center to the Commanding Officer of the Naval Air Station.

Procedural Requirements

(a) *Review under Executive Order 12866.* This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12291 do not apply.

(b) *Review under the Regulatory Flexibility Act.* This proposed final rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have significant economic impact on a substantial number of small businesses (i.e., small businesses and small Government jurisdictions). It has been determined that the amendments to this danger zone would have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, the Corps certifies that this proposal if adopted, will have no significant economic impact on small entities and preparation of a regulatory flexibility analysis is not warranted.

(c) *Review under the National Environmental Policy Act.* An environmental assessment has been prepared for this action. We have concluded that the amendments proposed herein will not have a significant impact to the human environment and preparation of an environmental impact statement is not required. The environmental assessment may be reviewed at the Baltimore District Office. Please contact Mr. Steve Elinsky at (410) 962–4503 for further information.

(d) *Unfunded Mandates Act.* This proposed rule does not impose an enforceable duty among the private sector and therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small Government will not be significantly and uniquely affected by this rulemaking.

(e) *Review under the Paperwork Reduction Act.* No additional information or record keeping requirements are imposed by this rulemaking. Accordingly no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.)

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Danger Zones.

In consideration of the above, the Corps is proposing to amend Part 334 of Title 33 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 226; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3).

2. Section 334.200 is amended by revising the heading, revising the last sentence in paragraph (a)(1), revising paragraphs (b)(2) and (b)(3) and (c), to read as follows:

§ 334.200 Chesapeake Bay, Point Lookout to Cedar Point; aerial and surface firing range areas, U.S. Naval Air Station, Patuxent River, Maryland, danger zones.

(a) * * *

(1) * * * Aerial and surface firing and dropping of nonexplosive ordnance will be conducted throughout the year.

* * * * *

(b) *Target areas.* * * *

(2) A circular area with a radius of 1,000 yards having its center at latitude 38°02″18″, longitude 76°09′26″, identified as Hannibal Target.

(3) *The regulations.* Nonexplosive projectiles and bombs will be dropped at frequent intervals in the target areas. Hooper and Hannibal target areas shall be closed to navigation at all times, except for vessels engaged in operational and maintenance operations as directed by the Commanding Officer of the U.S. Naval Air Station, Patuxent River, Maryland. No person in the water, vessel or other craft shall enter or remain in the closed areas or climb upon the targets, except with prior written approval of the Commanding Officer of the U.S. Naval Air Station, Patuxent River, Maryland.

(c) The regulations in this section shall be enforced by the Commanding Officer of the Naval Air Station, Patuxent River, Maryland, and such agencies as he/she may designate.

Dated: August 29, 1997

Robert W. Burkhardt,

Colonel, Colonel of Engineers, Executive Director of Civil Works.

[FR Doc. 97–23384 Filed 9–5–97; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 292

RIN 0596–AB39

National Recreation Areas; Smith River National Recreational Area

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: This notice of proposed rulemaking sets forth the procedures by which the Forest Service proposes to regulate mineral operations on National Forest System lands within the Smith River National Recreation Area. Required by statute, this proposed rule would supplement existing Forest Service mineral regulations. The intended effect is to allow for mineral operations in a manner consistent with the purposes for which Congress established the Smith River National Recreation Area.

DATES: Comments must be received in writing by November 7, 1997.

ADDRESSES: Send written comments to Director, Minerals and Geology Management Staff, MAIL STOP 1126, Forest Service, USDA, PO Box 96090, Washington, DC 20090–6090. All comments, including names and addresses when provided, will be placed in the record and are made available for public inspection and copying.

The public may inspect comments received on this proposed rule in the office of the Director, Fourth floor, Central Wing, Auditors Building, 201 Fourteenth Street SW., Washington, DC, between the hours of 8:30 am and 4:30 pm. Those wishing to inspect comments are encouraged to call (202) 205–1535 ahead of time to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Sam Hotchkiss, Minerals and Geology Management Staff, (202) 205–1535.

SUPPLEMENTARY INFORMATION: The Smith River National Recreation Area (SRNRA) was established by the Smith River National Recreation Area Act of 1990 (the Act) (16 U.S.C. 460bbb *et seq.*). The purposes of the Act are to ensure, ''* * * the preservation, protection, enhancement, and interpretation for present and future generations of the Smith River Watershed's outstanding wild and scenic rivers, ecological diversity, and recreation opportunities while providing for the wise use and sustained productivity of its natural resources * * *.'' In order to meet the purposes of the Act, Congress directed the Forest Service to administer the SRNRA to, among other things, provide for a broad range of recreation uses and improve fisheries and water quality. Subject to valid existing rights, Congress prohibited locatable mineral operations, prohibited mineral leasing (including leasing of geothermal resources), and limited the extraction of mineral materials within the SRNRA to situations where the material extracted is used for construction and maintenance of roads and other facilities within the SRNRA and in certain areas specifically excluded from the SRNRA by the Act.

The SRNRA consists of approximately 300,000 acres of National Forest System lands in the Six Rivers National Forest in northern California. The Act divided the SRNRA into eight distinct management areas and specified a management emphasis for each. There are also four areas within the exterior boundary of the SRNRA that are expressly excluded from the provisions of the Act.

One of the eight management areas established by the Act is the Siskiyou Wilderness, most of which was established on September 26, 1984. The Gasquet-Orleans Corridor was added to the Siskiyou Wilderness by the Act in 1990. The Act specified that the Siskiyou Wilderness be managed pursuant to the provisions of the Wilderness Act. In accordance with section 4(d)(3) of the Wilderness Act, the federal lands within the Siskiyou Wilderness (excluding the Gasquet-Orleans Corridor addition) were withdrawn from the operation of the mining and mineral leasing laws, subject to valid existing rights, as of September 26, 1984.

The Act also redesignated the following rivers or river segments and some of their tributaries as components of the National Wild and Scenic Rivers System: (1) The Smith River; (2) the Middle Fork of the Smith River; (3) the North Fork of the Smith River; (4) the Siskiyou Fork of the Smith River; and (5) the South Fork of the Smith River. These same rivers and most of the designated tributaries had previously been designated components of the Wild and Scenic Rivers System on January 19, 1981, pursuant to section 2(a)(ii) of the Wild and Scenic Rivers Act. The Act designated as wild segments two tributaries which had not been designated on January 19, 1981—Peridotite Creek, tributary to the North Fork of the Smith River; and Harrington Creek, tributary to the South Fork of the Smith River which is within the Siskiyou Wilderness. The Act also

changed the classification of some tributaries designated in 1981 from recreational to scenic or wild. For example, the lower 2.5 mile segment of Myrtle Creek, tributary to the Middle Fork of the Smith River, was reclassified as wild. In the Act, Congress directed that these wild and scenic rivers and their designated tributaries be administered in accordance with the Act and the Wild and Scenic Rivers Act. In the event of a conflict between the provisions of these two statutes, Congress specified that provisions of the more restrictive statute would apply. In accordance with section 9(a)(iii) of the Wild and Scenic Rivers Act, the federal lands within segments of wild and scenic rivers classified ''wild'' are withdrawn from the operation of the mining and mineral leasing laws, subject to valid existing rights.

Consequently, there are three different dates of withdrawal which apply to federal lands within the SRNRA. Federal lands within segments of the aforementioned five wild and scenic rivers that were originally classified ''wild'' were withdrawn from the operation of the mining and mineral leasing laws subject to valid existing rights on January 19, 1981, pursuant to the Wild and Scenic Rivers Act. Federal lands within the Siskiyou Wilderness (excluding the Gasquet-Orleans Corridor addition) not previously withdrawn were withdrawn subject to valid existing rights on September 26, 1984, pursuant to the Wilderness Act. The remaining federal lands in the SRNRA (including segments of the aforementioned wild and scenic rivers that had originally been classified ''scenic'' or ''recreational'' and the Gasquet-Orleans Corridor addition to the Siskiyou Wilderness) were withdrawn subject to valid existing rights on November 16, 1990, pursuant to the Act.

Mining and prospecting for minerals have been an important part of the history of the Smith River area since the 1850's. Mining operations within the Smith River area historically have been small-scale placer gold exploration and recovery operations within the bed and banks of the Smith River and its main tributaries. Panning, sluicing, and dredging operations occur predominantly during the summer months. In recent years, large, low-grade nickel-cobalt resources in the uplands of the Smith River watershed have attracted attention. As of May 1997, there were approximately 305 mining claims, covering about 7,700 acres of National Forest System lands within the SRNRA. However, none of these claims are for mill site locations. There are no active operations on lands with outstanding mineral rights. As of July 1, 1997, two plans of operations have been approved for the 1997 operating season.

In section 8 of the Act, Congress addressed to what extent mineral operations would be authorized within the SRNRA. Section 8(a) of the Act withdrew all federal lands in the SRNRA from the operation of the United States mining and mineral leasing laws (including laws governing the leasing of geothermal resources) subject to valid existing rights. As noted earlier, the withdrawal would apply only to those federal lands which had not previously been withdrawn under the authority of the Wild and Scenic Rivers Act or the Wilderness Act.

Section 8(b) of the Act precluded the issuance of patents for locations and claims made under United States mining laws prior to the establishment of the SRNRA.

Section 8(c) of the Act prohibited locatable mineral operations within the SRNRA except where valid existing rights are present. This subsection also prohibited the issuance of new mineral leases for lands in the SRNRA and, except where valid existing rights are present, prohibited operations on existing mineral leases for lands in the SRNRA. Section 8(c) further prohibited the issuance of new contracts or permits for lands in the SRNRA authorizing the extraction of mineral materials such as stone, sand, and gravel unless those mineral materials are to be used in the construction and maintenance of roads and other facilities within the SRNRA and/or the excluded areas. Finally, section 8(c) prohibited operations conducted pursuant to existing mineral material contracts and permits, except where valid existing rights are present.

Section 8(d) directed the Secretary to promulgate supplementary regulations to promote and protect the purposes for which the SRNRA was designated.

The only locatable mineral development activities that may occur in the SRNRA are (1) those for the purpose of gathering information to confirm or demonstrate a discovery of a valuable mineral deposit made prior to the date that the lands at issue were withdrawn from the operation of the United States mining laws; (2) those for the purpose of obtaining evidence for a mineral contest hearing; and (3) those for which the Forest Service has confirmed that valid existing rights are present and for which the Forest Service has issued the required authorization for the proposed operations.

Mineral material operations may also occur in the SRNRA pursuant to contracts or permits issued on or after November 16, 1990, providing that the mineral materials are to be used in the construction and maintenance of roads and other facilities within the SRNRA and/or the excluded areas. Exercise of outstanding mineral rights may also occur in the SRNRA after the Forest Service has confirmed that those rights are present and has issued any required authorization for those proposed operations.

On or about November 8, 1994, California Nickel Corporation (the ''Corporation''), the largest mining claim holder in the SRNRA, filed suit against the Department of Agriculture in the United States District Court for the Northern District of California alleging violations of the Act (*California Nickel Corporation* v. *Glickman*, No. C94–3904 DLJ (N.D. Cal.)). Specifically, the Corporation alleged that the Department had unreasonably delayed in promulgating the subject regulations which are required under the Act. The Forest Service did not disagree that Section 8(d) requires the promulgation of regulations; and, in fact, the agency had made some preliminary progress in developing regulations prior to the initiation of this lawsuit.

Following the publication of final supplementary regulations by the Forest Service in the **Federal Register** on April 3, 1996, the Corporation amended its complaint to challenge the substance of the final regulations. Among other things, the Corporation alleged that the final rule was arbitrary and capricious and violated the due process protections afforded under the United States Constitution.

The Government disagreed. However, on March 14, 1997, the district court agreed with the Corporation and set aside the April 3, 1996, final supplementary regulations. Specifically, the court held that the provision in the final rule which limited to five years the period for which a plan of operations may be approved was arbitrary and capricious, because the agency had failed to adequately address whether such a provision might result in a taking of private property. The court additionally held that the failure to establish a timetable for the Forest Service's review of plans of operations was arbitrary and capricious, because the rationale for not having a timetable had not been adequately presented. Finally, the court held that the Forest Service's failure to include a provision in the final rule that would enable an operator to obtain review by the Department of the Interior of a Forest Service determination that the operator did not possess valid existing rights was a denial of due process.

Although the Department respectfully disagrees with the district court's analysis of the legal sufficiency of the April 3, 1996, final rule, it chose not to seek an appeal before the Court of Appeals for the Ninth Circuit, since it would inevitably add more time to what has already become a lengthy process. Rather, the decision was made to modify those provisions of the April 3, 1996, final rule which the district court deemed objectionable, in a way that would ensure that the purposes for which Congress established the SRNRA would not be compromised. This new proposed rule reflects that balance.

Provisions of the Proposed Rule

This proposed rule has been prepared pursuant to section 8(d) of the Act and it addresses the concerns identified by the district court in its March 14, 1997, decision. The proposed rule would supplement existing Forest Service regulations pertaining to locatable mineral operations and mineral material operations in the SRNRA and provide new regulations pertaining to outstanding mineral rights on National Forest System lands in the SRNRA. Accordingly, mineral operations in the SRNRA would be subject not only to the provisions of this rule, but also to the applicable provisions of 36 CFR parts 228, 251, and 261, among others. The proposed rule clearly states that if there is a conflict or inconsistency between this rule and other applicable regulations, this rule would take precedence to the extent permitted by law.

The proposed rule divides mineral operations in the SRNRA into three categories—operations for locatable minerals under the United States mining laws, operations for outstanding mineral rights, and operations for mineral materials. The Act withdrew all federal lands within the SRNRA from operation of the mineral leasing laws, including the laws governing the leasing of geothermal resources, subject to valid existing rights. Since no new leases can be issued and there are no existing mineral leases within the SRNRA, leasing will not be discussed in the proposed rule. In addition, there are no reserved mineral rights in the SRNRA; consequently, there is no need to address this category of mineral ownership in the proposed rule. In the event that reserved mineral rights are established at some later date in the SRNRA, the agency will evaluate the applicable regulations currently set forth at 36 CFR 251.15 to determine whether sufficient protection can be afforded for the values for which the SRNRA was established. If not, then the agency would evaluate the need for further amendments to this rule.

The proposed rule is specifically designed to supplement existing locatable mineral regulations at 36 CFR part 228, subpart A, and thus to provide a greater degree of protection for the natural resource values identified in the SRNRA than would be provided under current regulations alone. This additional protection would be accomplished through: (1) The expansion of the types of mineral operations subject to the requirement for a plan of operations; (2) the establishment of additional reclamation standards; (3) the recognition that the Forest Service may disapprove a plan of operations; (4) a procedure to modify a previously approved plan of operations; and (5) expedited suspension procedures when harm or damage to resources or to people is imminent or is occurring. These and the other provisions of the proposed rule would enable the Forest Service to administer mineral operations in the SRNRA consistent with the purposes for which the area was established.

Section-by-Section Explanation of the Proposed Rule

This proposed rule would establish a new subpart G, Smith River National Recreation Area, in part 292 of Title 36 of the Code of Federal Regulations. A section-by-section explanation of the proposed rule follows.

Section 292.60, Purpose and Scope

Paragraph (a) of the proposed rule in § 292.60 explains that the purpose of this rule is to establish the rules and procedures for regulating mineral operations on National Forest System lands in the SRNRA so that they are in conformance with the Act. Paragraph (b) explains that rules and procedures in this rule apply only to mineral operations on National Forest System lands in the SRNRA. Paragraph (c) notes that this rule supplements existing Forest Service regulations and that mineral operations on National Forest System lands in the SRNRA will continue to be subject to other applicable regulations governing these activities, particularly parts 228, 251, and 261 of this chapter. Paragraph (d) states that, to the extent allowable by law, the provisions of this rule shall take precedence over the provisions of other applicable regulations if there is a conflict or inconsistency between them. Finally, paragraph (e) states that certain mineral operations approved before the effective date of this proposed rule would continue to operate under the conditions of approval, including the specified period of operations, providing that those operations are based on the existence of valid existing rights.

Section 292.61, Definitions

This section defines special terms used in the proposed rule, some of which have been previously established or used in other rules or directives. However, the definitions included in the proposed § 292.61 define the terms as they are used in this proposed rule.

Section 292.62, Valid Existing Rights

Proposed § 292.62(a) sets forth the definition of ''valid existing rights'' which the agency will use in making its determination concerning whether an applicant may engage in mining activity in the SRNRA. The date of withdrawal of National Forest System lands in the SRNRA from the operation of the mining and mineral leasing laws differs depending on whether the lands are within segments of the five wild and scenic rivers and their tributaries originally classified ''wild'', the Siskiyou Wilderness (excluding the Gasquet-Orleans Corridor addition), or the rest of the SRNRA (including the scenic and recreational segments of the five wild and scenic rivers and their designated tributaries and the Gasquet-Orleans Corridor addition to the Siskiyou Wilderness). These withdrawal dates are critical in the determination of valid existing rights.

Proposed § 292.62(b) clarifies the limitation of a mineral operation that the operator is permitted to conduct in order to confirm discovery of a valuable mineral deposit. This provision would authorize the approval of a plan of operations for limited mineral operations for the purposes of gathering information to confirm or demonstrate the discovery of a valuable mineral deposit made prior to the date that the lands at issue were withdrawn from the operation of the United States mining laws. Such operations may be necessary in certain circumstances to meet the requirements of § 292.64(a) or to obtain evidence for an upcoming mineral contest hearing. Case law discusses the limited circumstances where an operator may conduct mining operations in areas withdrawn from mineral entry prior to a final determination of valid existing rights (*United States* v. *Mavros,* 122 IBLA 297 (1992) and *United States* v. *Crowley,* 124 IBLA 374 (1992)). First, an operator must demonstrate that there has been an exposure of valuable minerals. If such a showing is made, authorization may be granted for the mining claimant to enter the claim(s) to gather information to

substantiate that a discovery existed as of the date of withdrawal and, if necessary, the date of an impending contest hearing. The scope of the mineral operations which may be approved pursuant to this section is limited to confirming the pre-existing discovery of a valuable mineral deposit and confirming the extent of the mineral deposit. Mineral operations which constitute prospecting or exploration or any other type of activity to disclose a deposit not exposed prior to the withdrawal are not allowed. Examples of the type of limited activities for information gathering purposes that have been found permissible include drilling to sample a previously disclosed valuable mineral deposit or reopening a caved portion of a previously driven adit to take samples of the mineral that had been exposed prior to withdrawal of the lands from mineral entry. However, an operator has no right to conduct any mining activities on land withdrawn from mineral entry to find mineralization rather than to confirm the existence and extent of valuable mineral deposits previously found.

Section 292.63, Plan of Operations Supplementary Requirements

Proposed § 292.63(a) would reduce the amount of discretion that the authorized officer currently has under 36 CFR 228.4(a) in determining whether a plan of operations or a notice of intent is required for a proposed mineral operation. In addition to the requirements of 36 CFR 228.4 for submitting a plan of operations or a notice of intent, this proposed rule would require a plan of operations for some mineral operations that in other locations may have been routinely conducted under a notice of intent. For example, to operate mechanical or motorized equipment such as a suction dredge and sluice under the proposed rule would require a plan of operations. Given the special status of the SRNRA and the special statutory management direction for the area set by Congress, further regulation of these kinds of operations is necessary in order to maintain the resource values which prompted its designation.

Many information requirements specified in proposed § 292.63(b) are for the same information that has been routinely gathered by the Forest Service from Bureau of Land Management records, county records, and the operator when a plan of operations is submitted for an area withdrawn from the operation of the United States mining laws subject to valid existing rights. Requiring the operator to submit this information as part of the plan of operations should decrease the cost and the amount of time it takes for the Forest Service to collect the information, and, thereby, to make a valid existing rights determination.

Proposed § 292.63(c) outlines the minimum operating information that must be included in a plan of operations in the SRNRA. The information requirements found at 36 CFR 228.4(c) and 228.8 that are generally applicable for a plan of operations on National Forest System lands are also applicable to a plan of operations proposed within the SRNRA. In addition to these specific information requirements, this proposed rule would require an operator who is not the claim owner to submit a copy of the authorization granting the operator permission to conduct operations on a mining claim owned by another party.

Proposed § 292.63(c) (1), (2), and (3) would require an operating plan to address environmental protection requirements of § 228.2 by identifying hazardous materials, toxic materials, and similar chemical substances to be used during mineral operations and how they will be disposed of; identifying the character and composition of mineral wastes that will be used or generated and a proposed method or strategy for the placement, control, isolation, or removal of the wastes; and how public health and safety are to be maintained. Proposed § 292.63(c) (1), (2) and (3) are proposed in order to protect natural resources from unnecessary environmental damage and to protect human health and safety as well as wildlife from unnecessary or dangerous risk from exposure to hazardous or toxic substances. There are significant environmental problems associated with past mining activities and practices that could have been avoided or mitigated if preliminary waste characterization or the proper storage, use and disposal of hazardous substances had occurred. For example, mining activities when sulfide minerals (e.g., pyrite, marcasite, and pyrrhotite) are present are likely to produce acid rock drainage resulting in contamination of waters of the United States and destruction of fish, amphibians, biota, and vegetation. Improper storage or use of mercury or cyanide in gold recovery operations have resulted in contamination of soils and surface and ground water and may adversely affect fish and wildlife, as well as pose a risk to human health and safety. Suction dredge operations utilize petroleum products, which if improperly used, stored or disposed of, result in contamination of soils and water and, potentially, groundwater, as well as adversely affecting fish and wildlife. The SRNRA has habitat for threatened and endangered species. It is also a popular recreation area. If mine waste is characterized at the plan of operations stage, then that information can be used to determine the appropriate mine design and to determine the treatment and disposal of waste and tailings to mitigate impacts and prevent unnecessary environmental damage and risks to people, fish, and wildlife. Likewise, if hazardous materials and other toxic materials, including but not limited to pesticides, herbicides, and petroleum products, are described at the plan of operations stage, then that information can be used to prevent improper use, storage, and disposal.

Proposed § 292.63(c)(3) would require reclamation concurrent with operations to the extent practicable. The existing regulations at 36 CFR 228.8(g) allow the authorized officer several options for determining when reclamation activities can occur. These activities can take place upon depletion of the mineral deposit, during the operation if practicable, or within one year after the operations have concluded, unless the authorized officer allows for a longer time. In contrast, reclamation activities for mineral operations under the proposed rule would occur concurrently with the mineral operations whenever practicable. A requirement for concurrent reclamation would allow for the land disturbed by the mining activity to be reclaimed in the shortest possible time. This requirement is consistent with the statutory requirements to protect and preserve the values of the SRNRA.

Section 292.64, Plan of Operations

Proposed § 292.64 establishes the procedures by which a plan of operation for mineral operations on mining claims in the SRNRA would be processed.

Proposed § 292.64(a) explains that the first item considered by the authorized officer, except when the plan is for limited mineral operations for purposes described in § 292.62(b), is whether the plan contains sufficient information for the Forest Service's review of the operator's claim that valid existing rights are present. For reasons of efficiency, it is logical for the authorized officer to first determine whether valid existing rights are present before reviewing that part of the plan which describes how the operator proposes to develop the mineral deposit. The proposed rule specifies that within 120 days of the submission of a plan of operations, the authorized officer must notify the operator in writing whether

the information provided was sufficient for the Forest Service's review of the operator's claim that valid existing rights are present. If the authorized officer concludes that additional information from the operator is necessary to review the operator's claim that valid existing rights are present, he or she shall inform the operator of what information needs to be provided. Upon the submission of all such information, the authorized officer shall promptly notify the operator in writing of the anticipated date of completion of the valid existing rights determination, which shall not be more than two years from the date of the notice. If the operator fails to provide sufficient information for the Forest Service's review of the operator's claim that valid existing rights are present, the Forest Service has no obligation to evaluate whether the operator has valid existing rights or to process the operator's proposed plan of operations.

An on-the-ground examination and written report by a certified mineral examiner is required for the agency to make a determination of valid existing rights for unpatented mining claims located within the SRNRA. The field examination and report may often take as much as two years to complete, due to such factors as the weather, accessibility of field sites, the availability of qualified personnel, preparation of environmental documents for sampling, and research and analysis.

The season for conducting field work in the SRNRA in order to determine valid existing rights is limited to approximately five months, May through September, due to the weather. This area annually receives about 80–90 inches of rain, predominantly from October through April. Back country roads and trails to mining claims may become impassable, and rain swollen rivers and streams cannot be safely sampled for gold placer deposits until the waters recede in the spring. During the winter, the agency determines the schedule for field examinations of mining claims; therefore, mining plans of operations that are submitted to the Forest Service during the spring or summer months cannot be scheduled until the following winter.

The scheduling of mining claim examinations is also greatly affected by the availability of certified review mineral examiners and mineral examiners. Forest Service manual direction on locatable minerals (FSM 2803) requires that only Forest Service certified review mineral examiners and mineral examiners conduct examinations involving mining claim validity and valid existing rights determinations. There are fifty-five (55) certified review mineral examiners and mineral examiners nationwide, but only five (5) in the Pacific Southwest Region of the Forest Service where the SRNRA is located. Generally, a certified mineral examiner schedules a field examination for a case involving validity with one year advance notice. Complex and/or large-scale mining cases may require two or more mineral examiners working together to complete the project. Therefore, the on-the-ground examination of a mining claim that is required for determination of valid existing rights may have to be scheduled to take place the calendar year following the submission of a plan of operations.

Field examination also may have to be preceded by a review of the environmental impacts associated with the field activity pursuant to the National Environmental Policy Act. Environmental impacts needs to be assessed whenever fieldwork entails trenching or some other form of excavation to prepare the site for sampling that might result in a disturbance of surface resources. The timeframes for conducting such a review would typically depend on a number of factors including, among other things, the magnitude and type of the proposed sampling, the location and accessibility of the site, other scheduled field examinations, and budgetary and staff constraints. Generally, however, a field examination would be scheduled sometime during the field season of the year after the plan of operations is submitted.

There are only two Certified Review Mineral Examiners in the Pacific Southwest Region. After the field examination is complete, the Forest Service must analyze the data collected and prepare a written report. The analysis typically involves estimating the quantity and quality of the minerals in the deposit, compiling market data, calculating development and production costs (including reclamation and environmental mitigation costs), and preparing discounted cash flow or similar analyses. Additional time may be needed to prepare maps and exhibits and to present the data and findings in a written report that must be approved by a certified review mineral examiner. The report preparation can take several months, depending upon the complexity of the case.

Proposed § 292.64(a) also would permit the authorized officer, upon a finding of good cause, to notify the operator in writing that an extension of time will be necessary to complete the valid existing rights determination. Situations which might warrant an extension include, but are not limited to: (1) Inaccessibility of the mining claims for a substantial part of a field season from May through September due to fire, flooding, landslides, or other natural conditions; (2) unavailability of specialists needed to conduct a mineral examination or prepare a mineral report due to other non-discretionary duties or medical leave; and (3) significant delays in performing surface disturbing activities on the mining claim required for the mineral examination in order to comply with environmental statutes and regulations.

Proposed § 292.64(b) explains that if the authorized officer determines that valid existing rights are not present, that officer must notify the operator of the determination, the reasons for the determination, that the development activities as stated in the plan of operations cannot be conducted, and that the Forest Service will transmit its mineral report to the Bureau of Land Management (BLM) in the United States Department of the Interior for review along with a request that the BLM initiate a mineral contest action against the pertinent mining claims. This is consistent with long-standing agency practice.

Proposed § 292.64(c) provides that determinations by the authorized officer that valid existing rights are not present will be regarded as final agency action not subject to further review or administrative appeal. This is also consistent with long-standing agency practice that adverse determinations referred to the Bureau of Land Management are not decisions subject to appeal since the BLM retains the statutory authority to make the final determination.

Proposed § 292.64(d) explains that if the authorized officer determines that valid existing rights are present, then the officer will notify the operator of the determination and that the review of the operational details of the plan will proceed. The authorized officer may, if he or she desires, inform the operator of the estimated time he or she thinks will be necessary to complete the evaluation of the plan of operations. Although the agency is committed to processing the plan of operations as expeditiously as possible, there are two reasons the proposed rule does not specify the time by which the review will be completed.

First, the time to complete the review of a plan of operations will vary dramatically from case to case depending upon the scope of the mining activity contemplated by the operator and the legal requirements with which the Forest Service must comply in

conducting the review. The review of some proposals for small-scale mining activities that will have a *de minimis* effect on SRNRA lands and resources could be completed in a few weeks. The review of proposals for large-scale mining operations which would have substantial effects on SRNRA lands and resources, on the other hand, may take a few years to complete. This disparity is based primarily on the legal requirements associated with agency evaluation of proposed actions which could have a major environmental impact. Specifically, compliance with the requirements of the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), and the National Historic Preservation Act (NHPA), among others, can frequently take several years.

In most instances, a review of large-scale mining operations in the SRNRA would necessarily entail the preparation of an environmental impact statement (EIS) pursuant to NEPA, consultation with the National Marine Fisheries Service and/or the United States Fish and Wildlife Service regarding the effect of the proposed operation on threatened and endangered species pursuant to the ESA, and consultation with the Advisory Council on Historic Preservation regarding the effect of the activity on sites included in the National Register of Historic Places pursaunt to the NHPA. Thus, given the extreme variability in the time it will take to complete its review, the Forest Service has concluded that it would be inappropriate to establish in this rule a ''one size fits all'' timeframe for reviewing plans of operations irrespective of the type of mining operation proposed or the potential impact the activity might have on SRNRA lands and resources.

Second, as noted above, where large-scale mining operations are contemplated, the Forest Service is legally required to consult with several other federal agencies as part of its review of the plan of operations. Although these other agencies share the Forest Service's desire to fulfill their obligations as quickly and efficiently as possible, the Forest Service recognizes that it has no control over how these other agencies determine their priorities and allocate their resources. Thus, it is deemed inappropriate for the Forest Service to establish a definite time for completing its review of a plan of operations since completing this task depends, at least in part, on input from, and consultations with, other agencies that are beyond the purview of this regulation and outside the Department of Agriculture.

Proposed § 292.64(e) states that after the minimum informational requirements concerning the operational part of the plan of operations has been submitted, the authorized officer shall notify the operator in writing at the conclusion of the review whether the plan has been approved or disapproved. These information requirements are necessary for the authorized officer to adequately evaluate the operational portion of the proposed plan of operations.

Proposed § 292.64(f) would require the authorized officer to explain the basis for a decision not to approve the plan of operations. It is current agency policy for the agency to notify the operator whether the proposed plan of operations is approved or not, and if not, a written explanation why it can not be approved.

Proposed § 292.64(g) would require the authorized officer to establish the time period for which a plan of operations would be approved. The time period would be determined on a case-by-case basis but would be based upon the minimum amount of time that would be reasonably necessary to complete the activities set forth in the plan of operations.

Proposed § 292.64(h) is a provision that would enable the authorized officer to review and modify a previously approved plan of operations under a strictly limited set of circumstances. For example, a modification may be necessary to bring a previously approved plan of operations into conformance with applicable law and regulation. Or, a modification may be necessary to address new information such as the listing of a new species as threatened or endangered which was not listed the time the plan was approved.

Proposed § 292.64(i) explains that substantive changes to an already approved plan of operations proposed by the operator must be reviewed and approved by the authorized officer. Under this paragraph, the operator has the option to submit a modification of an approved plan of operations, as provided for in 36 CFR 228.4(e), which clearly identifies the elements that are different from the previously approved plan of operations, or to submit a supplemental plan of operations pursuant to 36 CFR 228.4(d).

Section 292.65, Plan of Operations Suspension

Proposed § 292.65 authorizes the authorized officer to suspend operations under an approved plan of operations, if the operator is not in compliance with applicable law, regulations, or the terms and conditions of the approved plan. If an operator is found to be in noncompliance, the authorized officer must provide the operator with the reasons why the mineral operation is not in compliance with the laws, regulations, or the approved plan of operations; specify what the operator has to do to come into compliance; and specify a reasonable time period to abate the noncompliance. Generally, the operator will have at least 30 days from the date of the notice to correct the noncompliance before a suspension becomes effective. However, for those instances that present an imminent threat of harm to public health, safety, or the environment or where such harm is already occurring, the authorized officer can take immediate action to alleviate the threat or damage. The immediate suspension procedures would allow the authorized officer to take steps to avoid or minimize the risk of harm to persons and the environment. Under the immediate suspension procedures, the authorized officer would be required to notify the operator of the suspension and provide an opportunity for response only after the harm or risk of harm has been abated.

Section 292.66, Operating Plan Requirements

Proposed § 292.66 establishes that operating plans are required for operations involving outstanding mineral rights; that is, mineral rights owned by a party other than the surface owner at the time the surface estate was conveyed to the Federal government.

Proposed § 292.66(a) specifies that all individuals who want to exercise outstanding mineral rights in the SRNRA must submit an operating plan to the authorized officer.

Proposed § 292.66(b) specifies the information that an operator must provide in order to conduct mineral operations involving outstanding mineral rights where the surface estate is National Forest System land within the SRNRA. The operating plan must include specific information, such as: (1) The name and legal mailing address of the operator, owner, and any lessees, assigns, and designees; (2) evidence of ownership of the outstanding mineral rights; (3) sketches or maps showing the location of the outstanding mineral rights, the proposed area of operations, and the location and size of areas to be disturbed, including existing or proposed structures, facilities and other improvements; (4) a description of the type of operations including a schedule for construction and drilling; (5) identification of the hazardous materials

and any other toxic materials to be used during the operation and the proposed means for disposing of such substances; (6) identification of the character and composition of the mineral wastes that will be used or generated and a proposed method or strategy for their handling; and (7) a reclamation plan to reduce or control on-site and off-site damage to natural resources resulting from mineral operations, including descriptions of how public health and safety would be maintained and how the area of surface disturbance would be reclaimed. The information required in § 292.66(c) (1) and (2) is needed in order for the authorized officer to determine that the individuals or entities proposing the operations hold the mineral rights. The information required in § 292.66(c)(3) is needed in order for the authorized officer to determine that the proposed operations would occur on the mineral estate, as well as what uses off the mineral estate would require additional authorizations. The information required in § 292.66(c) (4) through (7) is needed for the same reasons set forth in the discussion at proposed § 292.63(c) (1) through (3), namely to protect the land and resources of the SRNRA from unnecessary environmental damage, protecting humans and wildlife from unnecessary or dangerous risk from exposure to hazardous or toxic substance, as well as ensuring that reclamation would return the surface to a condition or use that is consistent with the Six Rivers National Forest Land and Resource Management Plan.

Section 292.67, Operating Plan Approval

Proposed § 292.67 establishes the procedures by which operating plans for outstanding mineral rights in the SRNRA would be processed. The requirements of the proposed section reflect long-standing agency administrative practice.

Proposed § 292.67(a) requires the authorized officer to review that portion of the operating plan related to substantiating outstanding mineral rights and notify the operator whether the necessary information required to substantiate ownership of outstanding mineral rights has been provided to the Forest Service. If more information must be provided by the operator, the authorized officer must specify what is needed. If sufficient information has been submitted, the authorized officer would notify the operator in writing of the anticipated date that the review would be completed. Before an operator is allowed to conduct mineral operations in withdrawn lands, the agency must determine that the operator has a legal right to conduct the proposed activity. This process has been used by the agency for many years.

Proposed § 292.67(b) would specify that if outstanding mineral rights have not been verified, the authorized officer would notify the operator of the finding, the reasons for such a finding, and that the proposed operation cannot be conducted. This is the standard operating procedure used by the agency for many years.

Proposed § 292.67(c) would specify that if outstanding mineral rights have been verified, the authorized officer would notify the operator that outstanding mineral rights have been verified and that the Forest Service would begin a review of the proposed operating plan. For the same reasons as set forth in the discussion at proposed § 292.67(c) with respect to plans of operations, the proposed rule does not include a time period by which the Forest Service must complete the review of operating plans involving outstanding minerals rights. Since the time to review operating plans may vary greatly depending on the scope of the proposed mining activity, and since other agencies besides the Forest Service may have a role to play in the review process, the agency did not think it was appropriate to include a provision requiring the completion of the review by a date certain. Again, however, the agency is committed to doing everything within its authority to process operating plans as quickly as possible subject, of course, to the legal requirements with which it must comply.

Proposed § 292.67(d) explains that the authorized officer shall focus the review of the operating plan on whether the proposed development activities are consistent with the rights granted by the deed and with this provisions specified in the Six Rivers National Forest Land and Resource Management plan and whether the development activities will utilize the least amount of surface lands necessary for the operations.

Proposed § 292.67(e) would specify that upon completion of the review of the operating plan, the authorized officer would notify the operator of the authorized officer's findings. If the findings indicate that the proposed operating plan is consistent with the rights granted by the deed of conveyance, consistent with the Six Rivers National Forest Land and Resource Management Plan, and uses only that portion of the surface that is absolutely necessary, the operating plan would be approved by the Forest Service. If the findings indicate that the proposed operating plan does not meet one or more of these three criteria, the authorized officer must explain how the proposed operating plan is inconsistent with one or more of the three criteria and negotiate proposed changes with the operator. This is a long-standing procedure used by the agency to determine whether or not the operator has a legal right to conduct the proposed minerals activity on the private land. The intended affect is to ensure that the rights of the private land owner and the Forest Service are considered in the decisionmaking process.

Proposed § 292.67(f) would require that another operating plan be submitted if additional operations, not already included in an approved operating plan, are proposed and that the process as outlined in § 292.67(d) would be followed. This provision is similar to provisions in 36 CFR 228.5(c) and 292.64(i) of the proposed rule. By requiring similar information and review of operations for outstanding mineral rights as required for locatable minerals, the Forest Service can ensure that the values for which the SRNRA was established are protected. Also, operators can be assured that requirements for modifications to an operating plan are consistent with requirements of other mineral activities, and thus compatible with direction in the forest plan.

Section 292.68, Mineral Material Operations

Proposed § 292.68 provides that disposals of mineral materials would continue to be governed by the existing mineral material regulations set forth at 36 CFR part 228, subpart C, but that any disposals made after the establishment of the SRNRA would be approved only if the material is not within a designated wilderness area and is to be used for construction and maintenance of roads and other facilities within the SRNRA or in one of the four excluded areas identified by the Act.

Section 292.69, Reclamation

Proposed § 292.69 states that when it is practicable, reclamation activities will be conducted concurrently for all mineral operations in the SRNRA. Reclamation was previously addressed under the plan of operations supplementary requirements, but now is proposed as a separate section to make it clear that concurrent reclamation is applicable to all mineral operations and that, in contrast to most operations, concurrent reclamation is not just an option for consideration, but is a normal operating procedure in the NRA. This requirement is consistent with the

special protection that Congress intended for the area.

Section 292.70, Indemnification

This section would provide a means of protecting the United States from liability as a result of claims, demands, losses, or judgments caused by an operator's use or occupancy. In addition, the operator would be required to pay the costs incurred by the Forest Service or other agencies resulting from noncompliance with an approved plan of operations or an approved operating plan.

Operators have not had to bear any of the costs incurred by the Forest Service to administer mineral operations on National Forest System lands even if operations were not being conducted under the approved conditions. Proposed § 292.70(c) would require those operators who do not abide by the conditions of an approved plan of operations or operating plan to pay the costs incurred by the Forest Service resulting from noncompliance. Congress has specifically allowed for mineral activities in this special area. This cost provision is a monetary incentive to help ensure that operators who have the legal right to conduct mineral operations in the NRA abide by the requirements approved for their operation.

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this regulation is not a significant rule. This proposed rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, or State and local governments. This proposed rule will not interfere with an action taken or planned by another agency and it will not raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, loan programs, or the rights and obligations of recipients of such programs. Accordingly, this proposed rule is not subject to OMB review under Executive Order 12866.

Moreover, this proposed rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by that Act because of its limited scope and application. Also, this proposed rule does not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete in local or foreign markets.

Environmental Impact

The Forest Service has reviewed the environmental assessment (EA) that was prepared for the SRNRA supplementary mining regulations previously published on April 3, 1996, and determined that no additional analysis is necessary for this rulemaking because the proposed changes to the rule will have no effect on the quality of the human environment. A copy of the EA is available upon request by calling the contact listed earlier in this rulemaking under **FOR FURTHER INFORMATION CONTACT**.

Controlling Paperwork Burdens on the Public

Section 292.63(b) of this proposed rule specifies that in addition to the requirements of § 228.4, an operator must provide information to support valid existing rights as part of a plan of operations. Also, proposed § 292.66(b) requires those who wish to exercise outstanding mineral rights to submit an operating plan. The Office of Management and Budget approved the information collection, titled 36 CFR part 292, subpart G—Smith River National Recreation Area, prior to publication of the final SRNRA supplementary regulations in the **Federal Register** on April 3, 1966, and assigned OMB Approval No. 0596–0138. That approval remains in effect.

Section 292.63 (c)(1)—(c)(3) of this proposed rule specifies that in addition to the requirements of §§ 228.4 and 228.8, an operator must provide information identifying hazardous and toxic materials and similar chemical substances to be used during the mineral operations and how they will be disposed of; the character and composition of mineral wastes that will be used or generated and the proposed method or strategy for handling those wastes; and how public health and safety will be maintained. This information requirement was not part of the final supplementary SRNRA rule published in the **Federal Register** on April 3, 1996, and is not covered under other approved information requirements. Therefore, in accordance with the rules of 5 CFR part 1320 and the Paperwork Reduction Act of 1980 as amended (44 U.S.C. 3507), the Forest Service is modifying its description of OMB No. 0596–0138 and requesting Office of Management and Budget review and approval of the information that would be required by § 292.63 (c)(1)—(c)(3).

Although §§ 292.63 (c)(1)—(c)(3) of the proposed rule requires the operator to submit more information with a plan of operations than is required by part 228, subpart A, this is information that the operator needs to provide in order to conduct the mineral operations. Therefore, these provisions will require little additional effort by the operator. The agency estimates that an operator preparing a plan of operations will spend an average of 2 hours gathering and submitting the information related to the use and disposal of hazardous materials, the nature and handling of the mineral waters, and maintenance of public health and safety. Respondents are operators planning mining operations on federal land in the SRNRA. An estimated 2 respondents respond each year, resulting in an estimated total annual burden of 4 hours. Reviewers who wish to comment on these information requirements should submit their views to the Forest Service at the address listed earlier in this document as well as to the: Forest Service Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

No Takings Implications

In compliance with Executive Order 12630 and the Attorney General's Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings, a Takings Implication Assessment (TIA) of this proposed rule has been prepared and considered in determining whether to proceed with the proposed rule as currently drafted. The TIA concluded that the agency action of publishing a proposed rule for public notice and comment did not present a risk of a taking.

Unfunded Mandates Reform

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, which the President signed into law on March 22, 1995, the Department has assessed the effects of this rule on State, local, and tribal governments and the private sector. This rule does not compel the expenditure of $100 million or more by any State, local, or tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Civil Justice Reform Act

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted, (1) all State and local laws and regulations that are in conflict with this

proposed rule or which would impede its full implementation would be preempted; (2) no retroactive effect would be given to his proposed rule; (3) it would not require administrative proceedings before parties could file suit in court challenging its provisions.

List of Subjects in Part 292

Administrative practice and procedures, Environmental protection, Mineral resources, National forests, National recreation areas, and Surety bonds.

Therefore, for the reasons set forth in the preamble, it is proposed to amend part 292 of chapter II of title 36 of the Code of Federal Regulations by adding a new subpart G to read as follows:

PART 292—NATIONAL RECREATION AREAS

Subpart G—Smith River National Recreation Area

Sec.
292.60 Purpose of scope.
292.61 Definitions.
292.62 Valid existing right.

Locatable Minerals

292.63 Plan of operations supplementary requirements.
292.64 Plan of operations approval.
292.65 Plan of operations suspension.

Outstanding Mineral Rights

292.66 Operating plan requirements—outstanding mineral rights.
292.67 Operating plan approval—outstanding mineral rights.

Mineral Materials

292.68 Mineral material operations.

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292.69 Concurrent Reclamation.
292.70 Indemnification.

Subpart G—Smith River National Recreation Area

Authority: 16 U.S.C. 460bbb *et seq.*

292.60 Purpose and scope.

(a) *Purpose*. The regulations of this subpart set forth the rules and procedures by which the Forest Service regulates mineral operations on National Forest System lands within the Smith River National Recreation Area as established by Congress in the Smith River National Recreation Area Act of 1990 (16 U.S.C. 460bbb *et seq.*).

(b) *Scope*. The rules of this subpart apply only to mineral operations on National Forest System lands within the Smith River National Recreation Area.

(3) *Applicability of other rules*. The rules of this subpart supplement existing Forest Service regulations concerning the review, approval, and administration of mineral operations on National Forest System lands including, but not limited to, those set forth at parts 228, 251, and 261 of this chapter.

(d) *Conflicts*. In the event of conflict or inconsistency between the rules of this subpart and other parts of this chapter, the rules of this subpart take precedence, to the extent allowable by law.

(e) *Applicability to ongoing operations*. The authorized officer may permit operations conducted pursuant to:

(1) An operating plan or a plan of operations that was approved prior to the effective date of these regulations to continue under the specified conditions of approval or issuance, provided that valid existing rights to extract the minerals are present or the operations are for the purposes specified in § 292.62(b), provided further that the authorized officer requires modification of such operations:

(i) To bring the plan into conformance with changes in applicable federal law or regulation;

(ii) To respond to new information not available at the time the authorized officer approved the plan; for example, new listings of threatened or endangered species; or

(iii) To correct errors or omissions made at the time the plan was approved; for example, to ensure compliance with applicable federal law or regulation.

(2) A permit or contract for the disposal of mineral materials which was issued prior to the effective date of these regulations to continue under the specified conditions of issuance, provided that the authorized officer requires the modification of such operations:

(i) To bring the plan into conformance with changes in applicable federal law or regulations;

(ii) To respond to new information not available at the time the authorized officer approved the plan; for example, new listings of threatened or endangered species; or

(iii) To correct errors or omissions made at the time the plan was approved; for example, to ensure compliance with applicable federal law or regulation.

§ 292.61 Definitions.

The special terms used in this subpart have the following meaning:

Act means the Smith River National Recreation Area Act of 1990 (16 U.S.C. 460bbb *et seq.*).

Authorized officer means the Forest Service officer to whom authority has been delegated to take actions pursuant to the provisions of this subpart.

Hazardous material means any hazardous substance, pollutant, contaminant, hazardous waste, and oil or other petroleum products, as those terms are defined under any Federal, State, or local law or regulation.

Outstanding mineral rights means the rights owned by a party other than the surface owner at the time the surface was conveyed to the United States.

SRNRA is the abbreviation for the Smith River National Recreation Area, located within the Six Rivers National Forest, California.

§ 292.62 Valid existing rights.

(a) *Definition*. For the purposes of this subpart, valid existing rights are defined as follows:

(1) *For certain ''Wild'' River segments*. The rights associated with all mining claims on National Forest System lands within the SRNRA in ''wild'' segments of the Wild and Scenic Smith River, Middle Fork Smith River, North Fork Smith River, Siskiyou Fork Smith River, and South Fork Smith River, and their designated tributaries, except Peridotite Creek and the lower 2.5 miles of Myrtle Creek, which:

(i) Were properly located prior to January 19, 1981;

(ii) Were properly maintained thereafter under the applicable law;

(iii) Were supported by a discovery of a valuable mineral deposit within the meaning of the United States mining laws prior to January 19, 1981, which discovery has been continuously maintained since that date; and

(iv) Continue to be valid;

(2) *For Siskiyou Wilderness*. The rights associated with all mining claims on National Forest System lands within the SRNRA in the Siskiyou Wilderness except, those within the Gasquet-Orleans Corridor addition or those rights covered by paragraph (a)(1) of this section which:

(i) Were properly located prior to September 26, 1984;

(ii) Were properly maintained thereafter under the applicable law;

(iii) Were supported by a discovery of a valuable mineral deposit within the meaning of the United States mining laws prior to September 26, 1984, which discovery has been continuously maintained since that date; and

(iv) Continue to be valid;

(3) *For all other lands*. The rights associated with all mining claims on National Forest System lands in that portion of the SRNRA not covered by paragraph (a) (1) or (2) of this section which:

(i) Were properly located prior to November 16, 1990;

(ii) Were properly maintained thereafter under the applicable law;

(iii) Were supported by a discovery of a valuable mineral deposit within the

meaning of the United States mining laws prior to November 16, 1990, which discovery has been continuously maintained since that date; and

(iv) Continue to be valid;

(b) *Limited operations to confirm discovery.* Upon receipt of a proposed plan of operations as defined in § 292.63 and of sufficient information from the operator to show an exposure of valuable minerals on a claim that predates the withdrawal of the federal land from the operation of the Untied States mining laws, the authorized officer may authorize limited mineral operations for the purpose of gathering information to confirm or otherwise demonstrate the discovery of a valuable mineral deposit consistent with the definition in paragraph (a) of this section or to obtain evidence for a contest hearing regarding the claim's validity. Such authorization shall be limited in scope and duration so as to authorize only those operations that may be necessary to confirm or demonstrate the discovery of a valuable mineral deposit prior to the date of withdrawal of the federal land on which the claim is situated. Pursuant to this paragraph, the authorized officer shall not authorize any operations which would constitute prospecting, exploration, or otherwise uncovering or discovering a valuable mineral deposit.

Locatable Minerals

§ 292.63 Plan of operations supplementary requirements

(a) *Applicability.* In addition to the activities for which a plan of operations is required under § 228.4 of this part, a plan of operations is required when a proposed operation within the SRNRA involves mechanical or motorized equipment, including a suction dredge and/or sluice.

(b) *Information to support valid existing rights.* A proposed plan of operations within the SRNRA must include at least the following information on the existence of valid existing rights.

(1) The mining claim recordation serial number assigned by the Bureau of Land Management;

(2) A copy of the original location notice and conveyance deeds, if ownership has changed since the date of location;

(3) A copy of affidavits of assessment work or notices of intention to hold the mining claim since the date of recordation with the Bureau of Land Management;

(4) Verification by the Bureau of Land Management that the holding or maintenance fees have been paid or have been exempted;

(5) Sketches or maps showing the location of past and present mineral workings on the claims and information sufficient to locate and define the mining claim corners and boundaries on the ground;

(6) An identification of the valuable mineral that has been discovered;

(7) An identification of the site within the claims where the deposit has been discovered and exposed;

(8) Information on the quantity and quality of the deposit including copies of assays or test reports, the width, locations of veins, the size and extent of any deposit; and

(9) Evidence of past and present sales of the valuable mineral.

(c) *Minimum information on proposed operations.* In addition to the requirements of paragraph (b) of this section, a plan of operations must include the information required at 36 CFR 228.4 (c)(1) through (c)(3) which includes information about the proponent and a detailed description of the proposed operation. In addition, if the operator and claim owner are different, the operator must submit a copy of the authorization or agreement under which the proposed operations are to be conducted. A plan of operations must also address the environmental requirements of 36 CFR 228.8 which includes reclamation. In addition, a plan of operations also must include the following:

(1) An identification of the hazardous materials and any other toxic materials, petroleum products, insecticides, pesticides, and herbicides that will be used during the mineral operation, and the proposed means for disposing of such substances;

(2) An identification of the character and composition of the mineral wastes that will be used or generated and a proposed method or strategy for their placement, control, isolation, or removal; and

(3) An identification of how public health and safety are to be maintained.

§ 292.64 Plan of operations approval.

(a) *Timeframe for review.* Except as provided in paragraph (b) of § 292.62, upon receipt of a plan of operations, the authorized officer shall review the information related to valid existing rights and notify the operator in writing within one hundred and twenty (120) days of one of the following situations:

(1) That sufficient information on valid existing rights has been provided and the anticipated date by which the valid existing rights determination will be completed, which shall not be more than two (2) years after the date of notification; unless the authorized officer, upon finding of good cause with written notice and explanation to the operator, extends the time period for completion of the valid existing rights determination.

(2) That the operator has failed to provide sufficient information to review a claim of valid existing rights and, therefore, the authorized officer has no obligation to evaluate whether the operator has valid existing rights or to process the operator's proposed plan of operations.

(b) If the authorized officer concludes that there is not sufficient evidence of valid existing rights, he or she shall so notify the operator in writing. In the notice, the authorized officer shall set forth the reasons for the determination, inform the operator that the proposed mineral operation cannot be conducted, and advise the operator that the Forest Service will promptly notify the Bureau of Land Management of its determination and request the initiation of a mineral contest action against the pertinent mining claims.

(c) An authorized officer's decision pursuant to paragraph (b) that there is not sufficient evidence of valid existing rights is a final agency action not subject to further agency or Department of Agriculture review or administrative appeal.

(d) If the authorized officer concludes that there is sufficient evidence of valid existing rights, he or she shall so notify the operator in writing the review of the remainder of the proposed plan will proceed.

(e) Upon completion of the review of the plan of operations, the authorized officer shall ensure that the minimum information required by § 292.62(c) has been addressed and, pursuant to § 228.5(a) of the chapter, notify the operator in writing whether or not the plan of operations is approved.

(f) If the plan of operations is not approved, the authorized officer shall explain in writing why the plan of operations can not be approved.

(g) If the plan of operations is approved, the authorized officer shall establish a time period for the proposed operations which shall be for the minimum amount of time reasonably necessary for a prudent operator to complete the mineral development activities covered by the approved plan of operations.

(h) An approved plan of operations is subject to review and modification as follows:

(1) to bring the plan into conformance with changes in applicable federal law or regulation;

(2) To respond to new information not available at the time the authorized

officer approved the plan; for example, new listings of threatened or endangered species; or

(3) To correct errors or omissions made at the time the plan was approved; for example, to ensure compliance with applicable federal law or regulation.

(i) If an operator desires to conduct operations that differ in type, scope, or duration from those in an approved plan of operations, and if those changes will result in resource impacts not anticipated when the original plan was approved, the operator must submit a supplemental plan or a modification of the plan for review and approval by the authorized officer pursuant to § 292.64 of this part.

§ 292.65 Plan of operations suspension.

(a) The authorized officer may suspend mineral operations due to an operator's noncompliance with applicable statutes, regulations, or terms and conditions of the approved plan of operations.

(1) In those cases that present a threat of imminent harm to public health, safety, or the environment, or where such harm is already occurring, the authorized officer may take immediate action to stop the threat or damage without prior notice. In such case, written notice and explanation of the action taken shall be given the operator as soon as reasonably practicable following the suspension.

(2) Otherwise, the authorized officer must first notify the operator in writing of the basis for the suspension and provide the operator with a reasonably sufficient time to respond to the notice of the authorized officer or to bring the mineral operations into conformance with applicable laws, regulations, or the terms and conditions of the approved plan of operations.

(b) Except as otherwise provided in this section, the authorized officer shall notify the operator not less than 30 days prior to the date of the proposed suspension.

Outstanding Mineral Rights

§ 292.66 Operating plan requirements—outstanding mineral rights.

(a) Proposals for mineral operations involving outstanding mineral rights within the SRNRA must be documented in an operating plan and submitted in writing to the authorized officer.

(b) An operating plan for operations involving outstanding mineral rights within the SRNRA must include the following:

(1) The name and legal mailing address of the operator, owner, and any lessees, assigns, and designees;

(2) A copy of the deed or other legal instrument that conveyed the outstanding mineral rights;

(3) Sketches or maps showing the location of the outstanding mineral rights, the proposed area of operations, including but not limited to, existing and/or proposed roads or access routes identified for use, any new proposed road construction, and the approximate location and size of the areas to be disturbed, including existing or proposed structures, facilities, and other improvements to be used;

(4) A description of the type of operations which includes, at a minimum, a list of the type, size, location, and number of structures, facilities, and other improvements to be used;

(5) An identification of the hazardous materials and any other toxic materials, petroleum products, insecticides, pesticides, and herbicides that will be used during the mineral operation, and the proposed means for disposing of such substances;

(6) An identification of the character and composition of the mineral wastes that will be used or generated and a proposed method or strategy for their placement, control, isolation, remediation, or removal; and

(7) A reclamation plan to reduce or control on-site and off-site damage to natural resources resulting from mineral operations. The plan must:

(i) Provide reclamation to the extent practicable;

(ii) Show how public health and safety are maintained;

(iii) Identify and describe reclamation measures to include, but not limited to, the following:

(A) Reduction and/or control of erosion, landslides, and water runoff;

(B) Rehabilitation of wildlife and fisheries habitat to be disturbed by the proposed mineral operation; and

(C) Protection of water quality.

(iv) Demonstrate how the area of surface disturbance will be reclaimed to a condition or use that is consistent with the Six Rivers National Forest Land and Resource Management Plan.

§ 292.67 Operating plan approval—outstanding mineral rights.

(a) Upon receipt of an operating plan, the authorized officer must review the information related to the ownership of the outstanding mineral rights and notify the operator that:

(1) sufficient information on ownership of the outstanding mineral rights has been provided; or

(2) sufficient information on ownership of outstanding mineral rights has not been provided, including an explanation of the specific information that still needs to be provided, and that no further action on the plan of operations will be taken until the authorized officer's receipt of the specified information.

(b) If the review shows outstanding mineral rights have not been verified, the authorized officer must notify the operator in writing that outstanding mineral rights have not been verified, explain the reasons for such a finding, and that the proposed mineral operation cannot be conducted.

(c) If the review shows that outstanding mineral rights have been verified, the authorized officer must notify the operator in writing that outstanding mineral rights have been verified and that review of the proposed operating plan will proceed.

(d) The authorized officer shall review the operating plan to determine if all of the following criteria are met:

(1) The operating plan is consistent with the rights granted by the deed;

(2) The operating plan is consistent with the Six Rivers National Forest Land and Resource Management Plan; and

(3) The operating plan uses only so much of the surface as is necessary for the proposed mineral operations.

(e) Upon completion of the review of the operating plan, the authorized officer shall notify the operator in writing of one of the following:

(1) The operating plan meets all of the criteria of paragraphs (d)(1) through (d)(3) of this section and, therefore, is approved;

(2) The operating plan does not meet one or more of the criteria in paragraphs (d)(1) through (d)(3) of this section. Where feasible, the authorized officer may indicate changes to the operating plan that would satisfy the criteria in paragraphs (d)(1) through (d)(3) of this section and, thus, if accepted by the operator, would result in approval of the operating plan.

(f) To conduct mineral operations beyond those described in an approved operating plan, the owner or lessee must submit, in writing, an amended operating plan to the authorized officer at the earliest practicable date. New operations covered by the proposed amendment may not begin until the authorized officer has reviewed and responded in writing to the proposed amendment. The authorized officer shall review a proposed amendment of an approved operating plan to determine that the criteria in paragraphs (d)(1) through (d)(3) of this section are met.

Mineral Materials

§ 292.68 Mineral material operations.

Subject to the provisions of part 228, subpart C, and part 293 of this chapter, the authorized officer may approve contracts and permits for the sale or other disposal of mineral materials, including but not limited to, common varieties of gravel, sand, or stone. However, such contracts and permits may be approved only if the material is not within a designated wilderness area and is to be used for the construction and maintenance of roads and other facilities within the SRNRA or the four excluded areas identified by the Act.

Other Provisions

§ 292.69 Concurrent reclamation.

Plans of operations involving locatable minerals, operating plans involving outstanding mineral rights, and contracts or permits for mineral materials should all provide, to the maximum extent practicable, that reclamation proceed concurrently with the mineral operation.

Indemnification

§ 292.70 Indemnification.

The owner and/or operator of mining claims and the owner and/or lessee of outstanding mineral rights are jointly and severally liable in accordance with Federal and State laws for indemnifying the United States for the following:

(a) Costs, damages, claims, liabilities, judgments, injury and loss, including those incurred from fire suppression efforts, and environmental response actions and cleanup and abatement costs incurred by the United States and arising from past, present, and future acts or omissions of the owner, operator, or lessee in connection with the use and occupancy of the unpatented mining claim and/or mineral operation. This includes acts or omissions covered by Federal, State, and local pollution control and environmental statutes and regulations.

(b) Payments made by the United States in satisfaction of claims, demands or judgments for an injury, loss, damage, or costs, including for fire suppression and environmental response action and cleanup and abatement costs, which result from past, present, and future acts or omissions of the owner, operator, or lessee in connection with the use and occupancy of the unpatented mining claim and/or mineral operations.

(c) Costs incurred by the United States for any action resulting from noncompliance with an approved plan of operations or activities outside an approved operating plan. Such costs may include, but need not be limited to, attorneys' fees and expenses.

Dated: September 2, 1997.

Robert Lewis, Jr.,

Acting Associate Chief.

[FR Doc. 97–23722 Filed 9–5–97; 8:45 am]

BILLING CODE 3410–11–M

POSTAL SERVICE

39 CFR Part 111

Eligibility Requirements for Certain Nonprofit Standard Mail Matter

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule will amend the standards for mail matter eligible to be sent at the Nonprofit Standard Mail rates. Specifically, mail matter that seeks or solicits contributions or membership dues payments and offers a premium item such as a tote bag or umbrella will be considered eligible for the Nonprofit Standard Mail rates provided that certain criteria are met. The Postal Service has determined that a revision to the standards in this manner is consistent with the treatment of similar solicitations by other agencies, most notably the Internal Revenue Service and the Federal Trade Commission.

DATES: Comments must be received on or before October 8, 1997.

ADDRESSES: Written comments should be mailed or delivered to Manager, Business Mail Acceptance, USPS Headquarters, 475 L'Enfant Plaza SW., Washington, DC 20260–6808. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Room 6801 at the above address.

FOR FURTHER INFORMATION CONTACT: Jerome M. Lease, 202–268–5188.

SUPPLEMENTARY INFORMATION: Nonprofit organizations authorized to mail at the Nonprofit Standard Mail rates commonly offer premium items when soliciting contributions or membership in their organizations. These premiums, often referred to as ''backend premiums'' since they are offered in return for a contribution, donation, or membership dues payment, include such items as tote bags, umbrellas, t-shirts, and coffee mugs.

By statute, material that advertises, promotes, offers, or, for a fee or consideration, recommends, describes, or announces the availability of any product or service, other than separately restricted travel, insurance, and financial instruments such as credit cards, is ineligible for the nonprofit rates of postage unless certain prescribed exceptions are met. 39 U.S.C. 3626(j)(1)(D). In accordance with its responsibility to administer the statute, the Postal Service promulgated new standards effective October 1, 1995.

Domestic Mail Manual (DMM) E670.5.4d. provides that Nonprofit Standard Mail rates may not be used for the entry of material that advertises a product or service unless the sale of the product or the provision of such service is substantially related to the exercise or performance by the organization of one or more of the purposes used by the organization to qualify for mailing at the Nonprofit Standard Mail rates. In the implementation of these rules, the Postal Service has concluded that ''utilitarian'' items such as tote bags, umbrellas, coffee mugs, t-shirts, and similar items are not normally considered substantially related to an organization's qualifying purposes.

Since the adoption of the regulations implementing the statute, the Postal Service has consistently held that backend premiums are to be considered advertising for the product offered as a premium. This policy was discussed in **Federal Register** articles promulgating the new rules. See 60 FR 22270, 22272 (May 5, 1995); 59 FR 23158, 23162 (May 5, 1994). It has also been followed in publications such as USPS Publication 417 (Nonprofit Standard Mail Eligibility) and training in this area. Backend premiums are similar to typical advertisements because they invite a transaction which provides funds to the sender, but are dissimilar from typical advertisements because the value of the premium is usually much less than the required donation or other payment. Although cognizant of the argument that the donor is motivated by eleemosynary purposes, rather than a desire for the article, the transaction can also be viewed as part donation and part sale, which, in the view of the Postal Service, makes the offer an advertisement under the statutory restrictions. This interpretation of the statute is, at least in part, supported by IRS policy, which requires donors declaring charitable deductions to subtract the value of premiums from donations.

Recently, the Postal Service has become aware of new developments which warrant review of the policy concerning backend premiums. Notably, an advisory opinion by the Federal Trade Commission held that telephone fundraising calls in which certain backend premiums are offered are not ''telemarketing'' because they are not ''conducted to induce the purchase of

goods or services.'' Similarly, the Internal Revenue Service does not deem nonprofit organizations that provide backend premiums to be involved in sales transactions.

The Postal Service believes it is reasonable to provide similar treatment to backend premiums, particularly where the receipt of the premiums does not appear to be the principal motivation of the donors or members. In these instances, the offer of the premiums will not be considered as ''advertisements'' for postal purposes; thus the announcements are exempt from the substantially related rules affecting advertisements in nonprofit mail. The Postal Service proposes two tests. First, the requested contribution or other payment must be at least five (5) times the total cost of the premiums to exempt the announcements from being considered as advertisements for the premiums. The cost of each premium is its actual cost to the nonprofit organization. Second, the requested contribution or other payment must be at least three (3) times the represented values in the mailpiece, if any, of the premiums. Both tests must be met or the offer will be considered an advertisement. Nonprofit organizations wishing to mail solicitations for contributions which offer a premium may be asked to substantiate the cost to the nonprofit organization for the premium, consistent with their usual obligation to demonstrate eligibility for nonprofit rates.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revisions of the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—-[AMENDED]

The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend Domestic Mail Manual E670.5.0, Eligible And Ineligible Matter, by renumbering subsections 5.9 to 5.10, 5.10 to 5.11, 5.11 to 5.12, and 5.12 to 5.13, and adding a new subsection 5.9 to read as follows:

5.0 ELIGIBLE AND INELIGIBLE MATTER

* * * * *

5.9 Contribution and Membership Premiums

Announcements for premiums received as a result of a contribution or payment of membership dues are not considered advertisements if the requested contribution or membership dues is at least 5 times the cost to the nonprofit organization of the premium item(s) offered and at least 3 times the represented value in the mailpiece, if any, of the premium item(s) offered.

* * * * *

3. An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

R. Andrew German,

Acting Chief Counsel, Legislative.

[FR Doc. 97–23682 Filed 9–5–97; 8:45 am]

BILLING CODE 7710–12–U

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–1 and 101–46

RIN 3090–AG50

Replacement of Personal Property Pursuant to the Exchange/Sale Authority

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends regulations issued by GSA for replacement of personal property pursuant to the exchange/sale authority. The exchange/sale authority permits executive agencies when acquiring replacement personal property, to exchange or sell similar items and apply the exchange allowance or proceeds of sale in whole or in part payment for the replacement property acquired. Changes have been made to incorporate plain English principles, streamline the narrative, define key terms, update organizational references, delete outdated regulatory references, delegate authority to executive agencies to approve deviations under certain conditions, and reduce restrictions and limitations on use of the authority.

DATES: Comments must be received on or before October 8, 1997.

ADDRESSES: Written comments should be sent to the Personal Property Management Policy Division (MTP), Office of Governmentwide Policy, General Services Administration, 1800 F St., NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Martha Caswell, Director, Personal Property Management Policy Division (202–501–3828).

SUPPLEMENTARY INFORMATION:

A. The General Services Administration (GSA) has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

B. Regulatory Flexibility Act

This rule is not required to be published in the **Federal Register** for public comment. Therefore, the Regulatory Flexibility Act does not apply.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed revisions do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 501 *et seq.* This rule also is exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel. This rule is written in a ''plain English'' style.

What is the ''plain English'' style of regulation writing?

The ''plain English'' style of regulation writing is a new, simpler to read and understand, question and answer regulatory format.

How does the plain English style of regulation writing affect employees?

A question and its answer combine to establish a rule. The employee and the agency must follow the language contained in both the question and its answer.

List of Subjects in 41 CFR Parts 101–1 and 101–46:

Exchange/sale of government property, government property management.

Therefore, it is proposed that 41 CFR Ch. 101 be amended set forth below:

PART 101–1—INTRODUCTION

1. The authority citation for 41 CFR parts 101–1 and 101–46 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

2. Section 101–1.110(a) is revised to read as follows:

§ 101–1.110 Deviations.

(a) In the interest of establishing and maintaining uniformity to the greatest extent feasible, except as otherwise provided, deviations; i.e., the use of any policy or procedure in any manner that is inconsistent with the policy or procedure prescribed in the Federal Property Management Regulations, are prohibited unless such deviations have been requested from and approved by the Administrator of General Services or his authorized designee. Deviations may be authorized by the Administrator of General Services or his authorized designee when so doing will be in the best interest of the Government. Requests for deviations shall clearly state the nature of the deviation and the reasons for such special action.

* * * * *

3. Part 101–46 is revised to read as follows:

PART 101–46—REPLACEMENT OF PERSONAL PROPERTY PURSUANT TO THE EXCHANGE/SALE AUTHORITY

Sec.

101–46.000 What is the purpose and scope of this part?
101–46.001 What are the definitions of some of the key terms used in this part?
101–46.001–1 Acquire.
101–46.001–2 Combat material.
101–46.001–3 Exchange.
101–46.001–4 Exchange/sale.
101–46.001–5 Executive agency.
101–46.001–6 Federal agency.
101–46.001–7 Historic item.
101–46.001–8 Replacement.
101–46.001–9 Similar.
101–46.002–How do you request deviations and who can approve them? .
101–46.002–1 Can you approve requests for deviations from this Part 101–46? .
101–46.002–2 Does GSA approve requests for deviations from this Part 101–46?

Subpart 101–46.1—[Reserved]

Subpart 101–46.2—Authorization

101–46.200 How do you determine whether to do an exchange or sale?
101–46.201 When must you make a reimbursable transfer to another Federal agency when using the exchange/sale authority, to what other organizations may you make a reimbursable transfer, and what are the conditions for a reimbursable transfer?
101–46.202 What are the limitations on the exchange/sale of personal property?
101–46.203 What special authorizations have been made for use of the exchange/sale authority?

Subpart 101–46.3—Exchange and Sale Procedures

101–46.300 What are the exchange procedures?
101–46.301 What are the sales procedures?
101–46.302 What are the accounting requirements for the proceeds of sale?

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

§ 101–46.000 What is the purpose and scope of this part?

This part prescribes regulations for use by you (an executive agency) when using the exchange/sale authority of section 201(c) of the Federal Property and Administrative Services Act of 1949, 63 Stat. 384, as amended (40 U.S.C. 481(c)). The regulations apply to all U.S. Government-owned personal property worldwide. For the exchange/sale of aircraft parts and hazardous materials, you must meet the requirements in this part and in parts 101–37 and 101–42 of this chapter, respectively.

§ 101–46.001 What are the definitions of some of the key terms used in this part?

§ 101–46.001–1 Acquire.

Acquire means procure or otherwise obtain personal property, including by lease.

§ 101–46.001–2 Combat material.

Combat material means arms, ammunition, and implements of war listed in the U.S. munitions list (22 CFR part 121).

§ 101–46.001–3 Exchange.

Exchange means to replace a non-excess or non-surplus personal property item by trade or trade-in with the supplier of the replacement item when the allowance from the item being replaced is used to reduce or offset the cost of the replacement item. The supplier may be a Government agency, commercial or private organization, or an individual.

§ 101–46.001–4 Exchange/sale.

Exchange/sale means to exchange or sell a non-excess or non-surplus personal property item and apply the exchange allowance or proceeds of sale in whole or in part payment for the acquisition of a similar item.

§ 101–46.001–5 Executive agency.

Executive agency means any executive department or independent establishment in the executive branch of the Government, including any wholly owned Government corporation.

§ 101–46.001–6 Federal agency

Federal agency means any executive agency or any establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his direction).

§ 101–46.001–7 Historic item.

Historic item means property having added value for display purposes because its historical significance is greater than its fair market value for continued use. Items that are commonly available and remain in use for their intended purpose, such as military aircraft still in use by active or reserve units, are not historic items.

§ 101–46.001–8 Replacement.

Replacement means the process of acquiring property specifically to be used in place of property which is still needed but will no longer adequately perform all the tasks for which it is used.

§ 101–46.001–9 Similar.

Similar means that the acquired item and replaced item:

(a) Are identical; or

(b) Are designed and constructed for the same specific purpose; or

(c) Both constitute parts or containers for identical or similar end items; or

(d) Both fall within a single Federal Supply Classification (FSC) group of property that is eligible for handling under the exchange/sale authority.

§ 101–46.002 How do you request deviations and who can approve them?

General provisions for deviations from the Federal Property Management Regulations are found in § 101–1.110 of this chapter. Provisions for deviations from the regulations in this part are presented in this section.

§ 101–46.002–1 Can you approve requests for deviations from this part 101–46?

The head of an executive agency may approve deviations within the agency. This authority cannot be redelegated. Only onetime (individual) deviations may be approved by the head of an executive agency. GSA must approve any class deviations. The head of an executive agency may not approve deviations that would permit the exchange/sale of weapons. Also, neither the head of an executive agency nor GSA may approve deviations from regulatory provisions that are mandated by statute e.g., the requirement that the exchange/sale authority be used for replacement property only, and the requirement that property replaced and property acquired are similar. In the interest of maintaining uniformity, deviations shall be kept to a minimum and the head of an executive agency shall prescribe a formal procedure for the control of deviations within the agency and furnish a copy of the procedure to GSA. Also, a copy of each approved deviation shall be furnished to GSA upon its approval.

§ 101–46.002–2 Does GSA approve requests for deviations from this part 101–46?

If you choose not to exercise the authority delegated to you by GSA in the preceding section, or if GSA approval of a deviation request is necessary, you may request GSA approval of deviations by submitting a complete written justification to the General Services Administration (GSA), Office of Governmentwide Policy, Office of Transportation and Personal Property (MT), Washington, DC 20405.

Subpart 101–46.1—[Reserved]

Subpart 101–46.2—Authorization

§ 101–46.200 How do you determine whether to do an exchange or sale?

(a) When considering use of the exchange/sale authority, you must determine which of the two methods—exchange or sale—will provide the greater return for the Government. When estimating the return under each method, consider all administrative and overhead costs.

(b) If the exchange allowance or estimated sales proceeds for an item of property would be unreasonably low, the property should not be processed under this part. Rather, you should process it according to the regulations in part 101–43 (Utilization of Personal Property) of subpart 101–45.9 (Abandonment or Destruction of Personal Property) of this subchapter as applicable.

§ 101–46.201 When must you make a reimbursable transfer to another Federal agency when using the exchange/sale authority, to what other organizations may you make a reimbursable transfer, and what are the conditions for a reimbursable transfer?

(a) If you have property you want to replace which is eligible for exchange/sale, you should, to the maximum extent practicable, first solicit Federal agencies known to use or distribute such property and, if an agency wants it, arrange for a reimbursable transfer. Property that is eligible for replacement under replacement standards prescribed in subpart 101–25.4 of this chapter is not subject to this requirement.

(b) You may make a reimbursable transfer to not only other Federal agencies, but also the Senate, the House of Representatives, the Architect of the Capitol and any activities under the Architect's direction, the District of Columbia, and mixed-ownership Government corporations.

(c) When transferring property:

(1) You must do so under terms mutually agreeable to you and the recipient; and

(2) You must not require reimbursement of an amount greater than the estimated fair market value of the transferred property; and

(3) You must apply the transfer proceeds in whole or part payment for property acquired to replace the transferred property.

§ 101–46.202 What are the limitations on the exchange/sale of personal property?

This section describes: Types of property that are ineligible for exchange/sale; conditions that you must meet when conducting an exchange/sale transaction; and actions that are prohibited in an exchange/sale transaction;

(a) What types of property are ineligible for exchange/sale?

(1) You must not use the exchange/sale authority for the following FSC groups of personal property:

10 Weapons.
11 Nuclear ordnance.
12 Fire control equipment.
14 Guided missiles.
15 Aircraft and airframe structural components, except FSC class 1560 Airframe Structural Components.
42 Firefighting, rescue, and safety equipment.
44 Nuclear reactors (FSC class 4472 only).
51 Hand tools.
54 Prefabricated structure and scaffolding.
68 Chemicals and chemical products, except medicinal chemicals.
71 Furniture.
84 Clothing, individual equipment, and insignia.

(2) Also ineligible for exchange/sale are materials in the National Defense Stockpile (50 U.S.C. 98–98h) or the Defense Production Act inventory (50 U.S.C. App. 2093).

(b) What conditions must be met when conducting an exchange/sale transaction? You may use the exchange/sale authority only if you meet all six of the following conditions:

(1) The item exchanged or sold is similar to the item acquired; and

(2) The item exchanged or sold is not excess or surplus, and the item acquired is needed for approved programs; and

(3) The number of items acquired must equal the number of items replaced unless:

(i) The item(s) acquired perform all or substantially all of the tasks for which the old item(s) would otherwise be used; or

(ii) The item(s) sold or exchanged and the item(s) acquired meet the test for similarity specified at § 101–46.001–9(iii) in that they are a part(s) or container(s) for identical or similar end items; and

(4) The item exchanged or sold was acquired for official use and not for the principal purpose of exchange or sale; and

(5) You make a written administrative determination at the time of exchange or sale (or at the time of acquisition if it precedes the sale) to apply the exchange allowance or sale proceeds to the acquisition of replacement property; and

(6) You document that the above conditions have been met, a along with all other pertinent documentation, for any transactions under this part.

(c) What actions are prohibited in an exchange/sale transaction?

(1) Acquisition of personal property not otherwise authorized.

(2) Acquisition of personal property in violation of:

(i) Any restriction on procurement of a commodity or commodities; or

(ii) Any replacement policy or standard prescribed by the President, the Congress, or the Administrator of General Services; or

(iii) Any contractual obligation.

(3) Transfer, exchange, or sale of Nuclear Regulatory Commission-controlled materials unless you meet the requirements of § 101–42.1102–4 of this subchapter.

(4) Exchange or sale of controlled substances, unless you meet the requirements of § 101–42.1102–3 of this subchapter.

(5) Transfer, exchange, or sale of scrap materials, except in the case of scrap gold for fine gold.

(6) Exchange or sale of property which was originally acquired as excess or forfeited property or from another source other than new procurement, unless such property has been in official use by the acquiring agency for at least 1 year. You may exchange or sell forfeited property in official use for less than 1 year if the head of your agency certifies that a continuing valid requirement exists, but the specific item in use no longer meets that requirement, and that exchange or sale meets all other requirements of this part.

(7) Exchange or sale of property that is dangerous to public health or safety without first rendering such property innocuous or providing for adequate safeguards as part of the exchange/sale.

(8) Exchange or sale of combat material without first demilitarizing it in accordance with applicable regulations.

(9) Exchange or sale of Flight Safety Critical Aircraft Parts unless you meet the provisions of § 101–37.610 of this chapter.

§ 101–46.203 What special authorizations have been made for use of the exchange/sale authority?

(a) You may exchange, without monetary appraisal or detailed listing or reporting, books and periodicals in your libraries not needed for permanent use for other books and periodicals.

(b) In acquiring items for historical preservation or display at Federal museums, you may exchange historic items in the museum property account without regard to the FSC group or the requirement in § 101–46.202(b)(3), provided the exchange transaction is documented and certified by the head of your agency to be in the best interests of the Government and all other provisions of this part are met. The documentation must contain a determination that the item exchanged and the item acquired are historic items.

Subpart 101–46.3—Exchange and Sale Procedures

§ 101–46.300 What are the exchange procedures?

(a) Most exchange transactions should occur when a vendor delivers a replacement item and removes the item being replaced. This is the most efficient and cost effective exchange procedure because the item being replaced may remain in use up to the time the replacement item is delivered, when it is immediately removed by the vendor, and storage, handling, and administrative costs are minimized.

(b) You may internally reassign eligible items no longer needed by one organizational unit to another unit for exchange with the supplier of a replacement item. Physical movement of the reassigned item is not required unless specified by the contract.

§ 101–46.301 What are the sales procedures?

(a) The methods of sale, terms and conditions of sale, and forms prescribed in § 101–45.304 of this subchapter shall be used in the sale of property being replaced, except for the provisions of § 101–45.304–2(a) of this subchapter regarding negotiated sales. Section 3709, Revised Statutes (41 U.S.C. 5), is applicable to such sales and specifies the following conditions under which property being replaced can be sold by negotiation:

(1) The reasonable value involved in the contract does not exceed $500, or

(2) Otherwise authorized by law.

(b) Property eligible for exchange/sale may be sold by negotiation at fixed prices in accordance with the provisions of § 101–45.304–2(b) of this subchapter.

§ 101–46.302 What are the accounting requirements for the proceeds of the sale?

Except as otherwise authorized by law, proceeds from sales of personal property disposed of under this part must be accounted for in accordance with the General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies, Title 7, Fiscal Procedures, Section 5.5D.

Dated: September 2, 1997.

G. Martin Wagner,

Associate Administrator for Governmentwide Policy.

[FR Doc. 97–23669 Filed 9–5–97; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Parts 1000, 1001, 1002 and 1005

RIN 0991–AA87

Health Care Programs: Fraud and Abuse; Revised OIG Exclusion Authorities Resulting From Public Law 104–191

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This rulemaking addresses proposed revisions to the OIG's sanction authorities in conjunction with sections 211, 212 and 213 of the Health Insurance Portability and Accountability Act of 1996, along with other technical and conforming changes to the OIG exclusion authorities set forth in 42 CFR parts 1000, 1001, 1002 and 1005. These proposed revisions are specifically designed to expand the protection of certain basic fraud authorities, and revise and strengthen the current legal authorities pertaining to exclusions from the Medicare and State health care programs.

DATES: To assure consideration, public comments must be delivered to the address provided below by no later than 5 p.m. on November 7, 1997.

ADDRESSES: Please mail or deliver your written comments to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG–20–P, Room 5246, Cohen Building, 330 Independence Avenue, S.W., Washington, D.C. 20201. Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OIG–20–P.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, (202) 619–0089, OIG Regulations Officer.

SUPPLEMENTARY INFORMATION: Comments will be available for public inspection September 22, 1997 in Room 5550 of the Office of Inspector General at 330 Independence Avenue, S.W., Washington, D.C., on Monday through Friday of each week from 8:00 a.m. to 4:30 p.m., (202) 619–0089.

I. Background

A. Overview of OIG Exclusion Authorities

All exclusions imposed by the Office of Inspector General (OIG) are based on the authorities set forth in sections 1128, 1156 and 1892 of the Social Security Act (Act). In imposing these exclusions, the Secretary's primary objective and obligation is to protect the health and safety of patients receiving care under the Medicare and State health care programs, and to safeguard the integrity of these programs. The authorities contained in these sections of the Act were designed to protect the programs and their beneficiaries from unfit health care providers, individuals and businesses whose behavior has demonstrated that they pose a risk to program beneficiaries or to the integrity of the Medicare and State health care programs.

In 1987, the OIG's civil administrative sanction authorities were significantly revised and expanded by the Medicare and Medicaid Patient and Program Protection Act (MMPPPA), Public Law 100–93. Congress enacted MMPPPA ''to improve the ability of the [Department] to protect the Medicare and Medicaid programs for fraud and abuse, and to protect the beneficiaries of these programs from incompetent practioners and from inappropriate and inadequate care.'' MMPPPA authorized both mandatory and discretionary program exclusions intended to protect the integrity of the Medicare and State health care programs, as well as beneficiaries.

Manadatory exclusions. Section 1128(a) of the Act specifically sets forth the exclusion authorities with *mandated* enforcement provisions. This section of the Act requires the OIG to exclude from program participation any individuals or entities convicted of a *program-related* crime or patient abuse or neglect. These mandatory exclusions must be imposed for a minimum 5-year period.

Permissive exclusions. In addition, section 1128(b) sets forth a variety of sanction authorities all of which are *permissive* authorities that do not

necessarily mandate an action by the Department. Prior to recent statutory changes discussed below, a conviction relating to the delivery of a health care item or service that was not program-related, whether a felony or a misdemeanor, served as grounds for a permissive exclusion only. A number of these authorities are ''derivative'' exclusions, based on actions previously taken by a court, or other law enforcement or regulatory agencies. For example, these exclusions have been based on convictions for fraud, theft, financial misconduct and controlled substance violations, as well as license suspensions and revocations, and sanctions by other health agencies. Other permissive exclusions are ''non-derivative'' exclusions, that is, they are based on OIG-initiated determinations of misconduct that relate to such matters as quality of care and access of information. There were no specified minimum periods of exclusion under these permissive exclusion authorities, with the exception of the exclusion for failure to grant ''immediate access'' under section 1128(b)(12) of the Act.

These authorities have provided for the imposition of an exclusion from the Medicare (title 18), Medicaid (title 19), Maternal and Child Health Service Block Grant (title 5) and Block Grants to States for Social Services (title 20) programs, and are codified in 42 CFR parts 1001 and 1002 of the OIG regulations.

B. The Health Insurance Portability and Accountability Act of 1996

In the first significant amendments to the OIG's exclusion authorities since MMPPA, the Health Insurance Portability and Accountability Act (HIPAA) of 1996, Public Law 104–191, contains many important improvements to the laws that are intended as major steps towards the elimination of health care fraud and abuse. Among other things, HIPAA revises and strengthens the OIG's current sanction authorities pertaining to exclusions from Medicare and the State health care programs. Specifically, HIPAA broadens the OIG's mandatory exclusion; and establishes a new permissive exclusion applicable to individuals with ownership or control interest in sanctioned entities.

The revisions to the OIG's sanction authorities regarding our mandatory exclusion authority and the permissive exclusion authorities related to fraud under section 1128(b)(1) of the Act are effective upon enactment; the amendments regarding the minimum exclusion period and the permissive exclusion of individuals with ownership or control interest are effective on January 1, 1997. The provisions do allow, however, the Department some policy discretion in their implementation. As a result, we are developing this proposed rulemaking to address these new statutory provisions, along with other technical revisions to the OIG's exclusion authorities codified in 42 CFR parts 1000, 1001, 1002 and 1005.

II. Provisions of the Proposed Rule

A. Mandatory OIG Exclusion From Participation in the Medicare and State Health Care Programs

Section 211 of HIPAA has expanded the minimum 5-year mandatory exclusion authority of the OIG to cover *any felony conviction* under Federal, State or local law relating to health care fraud, even if governmental programs were not involved. Felony convictions relating to controlled substances are also the basis for a mandatory exclusion. The expanded mandatory exclusion provisions serve to recognize the seriousness of such felony convictions and ensure that beneficiaries of the Medicare and State health care programs are well protected from dealing with such individuals and entities. Section 211 still provides the Secretary with discretionary authority to exclude those individuals and entities from Medicare and State health care programs who have been convicted of a misdemeanor criminal health care fraud offense or who have been convicted of a criminal offense relating to fraud, theft, embezzlement, breach of fiduciary responsibility or other financial misconduct in programs (other than health care programs) funded by any Federal, State or local agency.

In accordance with section 211 of HIPAA, we would revise § 1001.101 of our regulations by adding new paragraphs (c) and (d) to address the mandatory provisions set forth in sections 1128a(3) and 1128a(4) of the Act. In terms of the scope of this provision, in order to appropriately restrict the imposition of these mandatory exclusions to only individuals and entities who might reasonably be expected to have future contact with Medicare, the State health care programs or other health care programs or systems, we are also proposing in §§ 1001.101(d) and 1001.401(a) to limit the applicability of this provision to any individual or entity that: (1) Is or has ever been a health care practitioner, provider or supplier; (2) holds or has held a direct or indirect ownership or control interest, as defined in section 1124(a)(3) of the Act, in an entity that is a health care provider or supplier; or (3) is or has ever been an officer, director, agent or managing employee, as defined in section 1126(b) of the Act, of such an entity, or is or has ever been employed in any capacity in the health care industry. A conforming change to our regulations at § 1001.102(b)(1), consistent with the sections 1128(a)(3) 1128(a)(4) of the statute, would also be made to reference any fraudulent acts—including theft, breach of fiduciary responsibility or other financial misconduct—committee in other governmental programs as a basis for an exclusion by the OIG from Medicare and the State health care programs.

The section heading for § 1001.201 would be revised to read as ''Conviction relating to fraud'' to indicate that this authority is not just relating to program and health care fraud. The section heading for § 1001.401 would be revised to read as ''Misdemeanor conviction relating to controlled substances.''

B. Establishment of Minimum Periods of Exclusion for Certain Permissive Exclusions

The absence of a statutorily required minimum exclusion period for permissive exclusions has resulted in an exceptional amount of administrative litigation over the issue of the length of exclusion in these cases. Since the reasonableness of the length of exclusions imposed is the single most litigated issue, this has required significant agency resources in each instance to defend the exclusion period imposed by the OIG. Section 212 has established minimum periods of exclusion from 1 to 3 years for permissive exclusions from the Medicare and State health care programs.

For (1) convictions of *misdemeanor* criminal health care fraud offenses, (2) criminal offenses relating to fraud in non-health care Federal or State programs, (3) convictions relating to obstruction of an investigation of health care fraud and (4) convictions of misdemeanor offenses relating to controlled substances, section 212 of HIPAA has established a minimum period of exclusion of 3 years, unless the Secretary determines that a longer or shorter period is appropriate due to aggravating or mitigating circumstances.

For permissive exclusions from Medicare and the State health care programs as a result of revocation, surrender or suspension of an individual's or entity's health care license, section 212 establishes a minimum exclusion period that would be not less than the period during which the individual's or entity's license was

revoked or suspended. Likewise, for permissive exclusions due to a suspension or exclusion from other Federal health care programs (such as CHAMPUS or the Veterans' Administration) or other State health care programs for reasons bearing on an individual's or entity's professional competence, professional performance or financial integrity, section 212 of HIPAA also establishes a minimum period of exclusion of not less than the period the individual or entity is excluded or suspended from that Federal or State health care program. As indicated above, this statutory provision is effective for any exclusion imposed or proposed by the OIG on or after January 1, 1997.

In addition, section 212 establishes a minimum of a 1-year period of exclusion for (1) individuals or entities who are found to have submitted (or caused to be submitted) claims for excessive charges, or who furnished (or caused to be furnished) unnecessary items or services; or (2) health maintenance organizations (as defined by section 1903(m) of the Act), or entity under a waiver established by section 1915(b)(1) of the Act, that are found to have failed to provide medically necessary items and services. The establishment of these minimum exclusion periods will aid to conserve governmental resources by reducing the amount of litigation and will foster more consistency.

Consistent with these statutory amendments, we would revise §§ 1001.701(d)(1) and 1001.801(c)(1) to add that with regard to the length of exclusion under these authorities, in no case may the period be shorter than one year. Furthermore, we would also revise § § 1001.501 and 1001.601 to state that the length of exclusion under this authority will never be for a period of time less than the period during which the individual or entity is excluded from that Federal or State health care program.

C. Permissive Exclusions of Individuals With Ownership or Control Interest in Sanctioned Entities

Prior to HIPAA, section 1128(b)(8) of the Act permitted the Secretary to exclude an entity when a convicted individual had an ownership, control or agency relationship with such entity. However, if an entity, rather than an individual, was convicted of Medicare or State health care program fraud, the OIG did not have the authority to exclude the individuals(s) who owned or controlled the entity and who may, in fact, have been responsible for the fraud. This created an obvious loophole whereby an individual who was indicted for fraud along with a business entity owned or controlled by that individual could avoid program exclusion by agreeing to have the business entity plead guilty and pay the fines. Having avoided conviction, the individual was then free to form a new corporation and continue to participate in the health care programs.

Section 213 of HIPAA has now expanded the statute by adding a new permissive exclusion authority (section 1128(b)(15) of the Act) applicable to individuals who have an ownership interest in, or have significant control over the operations of, an entity that has been convicted of a program-related offense. Specifically, under this provision, an individual who has a direct or indirect ownership or control interest in a sanctioned entity and who knows, or should know, of the action constituting the basis for the conviction or exclusion, may also be excluded from participation in Medicare and the State health care programs if the entity has been convicted of an offense under sections 1128(a) or 1128 (b)(1) through (b)(3) of the Act, or otherwise excluded from program participation. Under this authority, the culpable individual is also subject to program exclusion even if not initially convicted or excluded.

Accordingly, we would add a new § 1001.1051, Exclusion of individuals with ownership or control interest in sanctioned entities, to reflect the new statutory authority. Consistent with the statute, under this regulatory authority the OIG would need to demonstrate that, in the case of an investor, the individual acted in deliberate ignorance of the offense constituting the sanctionable action. In the case of an officer or managing employee of the business entity, the OIG will not need to demonstrate such knowledge. Under proposed § 1001.1051, when the entity has been excluded, the length of the individual's exclusion would be for the same period as that of the sanctioned entity with which the individual has had the prohibited relationship. Consistent with statutory intent, we are defining the term ''sanctioned entity'' under this section to mean an entity that has been convicted of any offense under §§ 1001.101 through 1001.104 of these regulations, or that has been terminated or excluded from participation in Medicare or a State health care program. Thus, under this authority, when an entity is no longer reimbursed under Medicare or the State health care programs as a result of a termination or exclusion by the Department, the owners of the entity will be subject to an exclusion as well.

In a conforming change, we also propose to revise § 1001.3002 by adding a new paragraph to clarify that if the specified criteria of this section are met, an individual excluded in accordance with the new proposed § 1001.1051 would be reinstated only upon an OIG determination that the excluded entity upon which the individual's exclusion was based has been reinstated in accordance with §§ 1001.3002(a) or 1001.3005.

D. Technical and Conforming Regulatory Revisions

In addition to the changes to the OIG regulations at 42 CFR parts 1001 and 1002 to comply with the revised sanction provisions set forth in HIPAA, we are proposing a number of technical and conforming regulatory changes in accordance with the HIPAA. Specifically, under the new statute, the OIG has been delegated authority for 3 new authorities referenced in Public Law 104–191—sections 1128 (a)(3) and (a)(4) and 1128 (b)(15) of the Act. As a result, technical and conforming changes to the OIG regulations are necessary. In addition, several minor conforming changes are also being proposed to correct omissions from previous regulatory issuances, and to clarify and expand the applicability of the existing regulations. A limited number of policy decisions are being proposed that relate to the clarification of (1) The definition of the term ''furnished;'' (2) the OIG's exclusion authority under section 1128(a)(2) of the Act concerning patient neglect and abuse convictions; (3) time limits on payments to suppliers for services by excluded providers; (4) when a reinstatement request will be received in accordance with an OIG exclusion taken under section 1128(b)(5) of the Act; and (5) terms ''incarceration'' and ''patient.''

Section 1000.10, General definitions: We would clarify the current definition of the term ''furnished'' to indicate that exclusions will apply to any individual or entity that provides or supplies items or services, directly *or indirectly.* When an individual or entity is excluded from Medicare and the State health care programs, the effect of the exclusion is that the programs may not pay for items and services furnished by that excluded individual or entity. The OIG has the authority—and sometimes the obligation when a mandatory exclusion is appropriate—to impose an exclusion on individuals or entities when the statutory requirements of section 1128 of the Act are met, regardless of whether (1) The individual or entity is paid by the programs directly or (2) the items or

services provided by the individual or entity are reimbursed by the programs indirectly through the submission of claims by a third party who is a direct provider, supplier or practitioner. In the past, we have elected not to exercise this authority in the case of manufacturers or distributors that do not submit claims for the items they provide because of concern that it would be difficult to administer exclusions against such entities are not reimbursed directly by the Department. At this time, the OIG is proposing to change this approach by exercising the authority given to us and clarifying the existing definition for ''furnished.''

Notwithstanding the difficulty in monitoring and administering exclusion against so-called ''indirect'' providers—such as manufacturers and distributors of drugs, medical devices and other items of durable medical equipment reimbursable under Medicare and the State health care programs—the OIG has determined that an exception for indirect providers and suppliers is not appropriate as a matter of policy. As a result, in clarifying the definition for the term ''furnished,'' we would make clear that exclusions of indirect providers will be imposed when appropriate, and that the effect of such exclusions will be that no payment may be made to any direct provider, practitioner or supplier for items or services manufactured, distributed or otherwise provided by any excluded individual or entity.

Section 1001.2, Definitions: Throughout part 1001, the current regulations list various aggravating factors to be considered as a basis for lengthening a period of exclusion. One aggravating factor in all instances when the exclusion is based on a conviction is whether the sentence imposed by the court included incarceration. Because many white collar criminals are not actually placed in jails, there has been some uncertainty over what incarceration entails. Consistent with Federal sentencing guidelines, we are proposing to add a definition in § 1002 for the term ''incarceration'' to include imprisonment or *any type of confinement with or without supervised release.* This would include, but would not be limited to, a correctional facility or other community confinement (such as a work release center), as well as house arrest and home detention.

We are proposing a new definition for the term ''patient'' to include any individual who is receiving health care items or services, including any item or service provided to meet his or her physical, mental or emotional needs, whether or not the item or service is reimbursed under Medicare or a State health care program and regardless of the location in which it is provided. We are concerned that the term ''patient'' has been narrowly defined in some instances to restrict its meaning to only an individual in a traditional medical care setting or within a traditional physician/patient relationship. We believe that the statute intended to prohibit neglect and abuse of *all* individuals receiving health care items and services regardless of the caretaker or the location within which the items or services are provided.

We are also proposing two changes to the existing definition of the term ''exclusion.'' To conform to the statutory language set forth in MMPPPA, Public Law 100–93, we are adding the words ''ordered or prescribed'' to indicate that items and services will not be reimbursed under Medicare and the State health care programs when furnished, *ordered or prescribed* by a specified individual or entity (underlining added). Under this definition, we are also codifying current OIG policy to indicate that even after an exclusion has expired, the individual or entity will not be eligible for program reimbursement until they are formally reinstated by the OIG.

A revision to the term ''sole source of essential specialized services in the community'' is also being proposed to indicate that it is a health *professional* shortage area (formally known as a health man power shortage area); and that this designation is now made by the Health Resources Services Administration, and not the Public Health Service. A proposed change under the term ''professionally recognized standards of health care'' would remove the specific references to the ''Food and Drug Administration,'' the ''Health Care Financing Administration'' (HCFA) and the ''Public Health Service,'' and substitute ''the Department'' as the entity in general who may declare a particular treatment modality as not being safe and effective.

Section 1001.101, Basis for liability: We are proposing to revise paragraph (b) to clarify the scope of the term ''neglect or patient abuse'' to indicate that it covers both the individual's custodial as well as medical treatment. In recent years, we have been seeing more cases arise from abuse and neglect in residential settings where the abused or neglected individual is not referred to as a ''patient.'' Further, the individual may not be receiving strictly medical care treatment, but rather may be provided with custodial care, such as ensuring that medicines are taken and meals are prepared. In implementing the OIG's exclusion authorities, administrative law judges (ALJs) have varied in their interpretation of the statute and have not developed a consistent standard for defining a patient and patient abuse. In order to provide consistent protection for all individuals similarly situated, notwithstanding the variations of State law, we are proposing to revise the regulations to indicate that the delivery of a health care service includes the provision of any items or services to an individual designed to meet their physical, mental or emotional needs or well-being, whether or not reimbursed under Medicare or a State health care program.

Section 1001.102, Length of exclusion: We are proposing to add a new factor that may be considered aggravating and therefore a basis for lengthening the exclusion period. In order to help distinguish between more egregious and less egregious cases involving patient abuse, we propose to include a new § 1001.102(b)(4) to provide that in the case of any conviction involving patient abuse or neglect, we will consider whether the action that resulted in the conviction (1) was premeditated, (2) was part of a continuing pattern of behavior, or (3) consisted of non-consensual sexual acts.

In addition, we are proposing an additional aggravating factor for consideration in § 1001.102 and elsewhere throughout part 1001 (see §§ 1001.201(b)(2)(vi), 1001.301(b)(2)(vi), 1001.401(c)(2)(v), 1001.501(b)(2)(iv), 1001.601(b)(2)(iii), 1001.701(d)(2)(v), 1001.801(c)(2)(v), 1001.901(b)(4), and 1001.951(b)(1)(iv). The proposed factor specifically relates to any other adverse action taken by any other Federal, State or local government agency or board based on the same set of circumstances that is serving as the basis for imposition of the exclusion. This additional factor is consistent with ALJ decisions regarding aggravating factors and the length of exclusion.

Further, § 1001.102(b) and the other sections referenced above, as currently written, do not allow the OIG to increase the length of exclusion if an individual or entity was convicted of other offenses at the same time as he or she was convicted of the offense that served as the basis for the exclusion. For example, this aggravating factor permits the OIG to increase the length of exclusion when the individual convicted of Medicare fraud has a *prior* drug conviction or income tax evasion conviction. However, if the individual is *simultaneously* convicted of Medicare fraud and any other offense, such as drug distribution or income tax evasion, there is currently no aggravating factor

that permits the OIG to consider the additional conviction or convictions. We believe it is not sensible to factor in conduct or wrongdoing that occurred in the past to demonstrate that an individual or entity lacks trustworthiness, but not to give as much weight to more recent conduct. To address this problem and allow greater flexibility to the OIG, we are proposed to amend § 1001.102(b) to indicate that in determining the length of exclusion, the OIG will consider whether the individual or entity (1) was convicted of other offenses besides those which formed the basis for the exclusion, or (2) has a documented history of criminal, civil or administrative wrongdoing. This would permit the OIG to consider any conviction prior to, concurrent with or subsequent to the conviction upon which the exclusion is based. (Parallel changes would be made, as applicable, throughout part 1001 in §§ 1001.201(b)(2), 1001.301(b)(2), 1001.401(c)(2), 1001.501(b)(2), 1001.601(b)(2), 1001.701(d)(2), 1001.801(c)(2), 1001.901(b), 1001.951(b)(1), 1001.1101(b), 1001.1201.(b), 1001.1301(b)(2), 1001.1401(b), 1001.1601(b)(1) and 1001,1701(c)(1).)

In addition to these aggravating factors, we are also proposing to include in § 1001.102(c)(3) (as well as in §§ 1001.201(b)(3)(iii), 1001.301.(b)(3)(ii), 101.401(c)(3)(i), 1001.501(b)(3)(i) and 1001.601(b)(3)(ii)) a new mitigating factor that would take into account whether the cooperation of an individual or entity resulted in additional cases being investigated, or reports being issued, by the appropriate law enforcement agency identifying program vulnerabilities or weaknesses. This new mitigating factor would only be taken into consideration in those situations where the law enforcement agency validated the person's information by opening up a case or by writing a report where, for example, a system vulnerability to HCFA or other program agency is identified and a solution recommended. We believe that the inclusion of this additional mitigating factor would (1) encourage greater cooperation by individuals and entities, and (2) afford the OIG greater flexibility in identifying and addressing issues related to program waste, fraud and abuse.

Section 1001.501, License revocation or suspension: Consistent with and to conform to the new statutory authority, we would delete paragraph (c) of § 1001.501, currently setting forth exceptions related to the length of exclusion for license revocation or suspension.

Section 1001.601, Exclusion or suspension under a Federal or State health care program: Prior to HIPAA, § 1001.601 set forth both mitigating and aggravating factors that are to be considered in determining the length of exclusion under this authority. To conform with the statute, we would revise paragraph (b)(3) of this section to indicate that with the establishment of a base exclusion period under this authority, mitigating factors may only be considered if aggravating factors exist that would justify a longer exclusion beyond the base period.

We are also proposing to clarify OIG policy and correct an inadvertent inconsistency that exists in the language set forth in § 1001.601(b)(4). The current paragraph states that ''[t]he OIG will normally not consider a request for reinstatement * * * until the period of exclusion imposed by the OIG expires.'' This language has created a problem for these OIG exclusions which are based entirely on State-imposed exclusions, and which must continue until the State exclusion ends. Since the law requires the Medicaid program to exclude for *the same* period as Medicare, this has resulted in a loop that makes it technically impossible for either the OIG of the State to end the exclusion except by an arrangement to do so simultaneously. Specifically, in many instances, a State is prepared to reinstate an individual or entity but is unable to do so because of the existing Medicare exclusion that the OIG has imposed in as a result of the original State Action. To solve this problem, we are proposing to revise paragraph (b)(4) of this section to state that if an individual or entity is eligible to apply for reinstatement, and the sole reason that the State has denied reinstatement is that the existing exclusion under Medicare imposed by the OIG is still in effect, the OIG will consider a request for reinstatement.

Section 1001.701, Excessive claims or furnishing of unnecessary or substandard items or services: In an effort to more clearly define the scope of an action under section 1128(b)(6) of the act, we are proposing to revise paragraph (a)(1) of this section to further clarify to whom an individual's or entity's excess charges or costs apply. The revised language would indicate that the OIG may exclude an individual or entity that has submitted, or caused to be submitted, bills or requests for Medicare or State health care program payments that contain charges or costs that are substantially in excess of their usual charges or costs for items or services furnished *to any of their customers, clients or patients.* We specifically welcome comments on this OIG policy clarification.

Section 1001.953, OIG report on compliance with investment interest safe harbor: We would delete this section since the time frame being reflected in this section is no longer operative. The current language stipulates that an OIG report to the Secretary be prepared within 180 days of the effective date addressing the investment interest safe harbor provisions. Those provisions were published as part of a final rulemaking (56 FR 35952, July 29, 1991) became effective upon the date of its publication. The report was not prepared for several reasons. The overriding reason for not issuing this report within the stipulated time frame was that it was not practical to effectively study this subject area until health care businesses had the opportunity to alter their practices to take advantage of this safe harbor. By the time a study might appropriately have been undertaken, this subject was superseded to a large degree by the enactment of section 1877 of the Act.

Section 1001.1001; Exclusion of entities owned or controlled by a sanctioned person: Questions have been raised regarding the legitimacy of the transfer of health care entities from excluded individuals to their spouses, and the circumstances under which such a transfer should constitute divestment of ownership and control of the entity by the excluded individual, and should thus preclude exclusion of the entity under § 1001.1001. In an effort to reiterate and emphasize existing OIG policy on this matter, we are proposing to revise the definition set forth in § 1001.1001(a)(2) for the term ''agent.'' This policy was clearly enunciated in the preamble of the final regulations implementing amendments to the OIG's exclusion authorities resulting from Public Law 100–93 (57 FR 3309, January 29, 1992), and we are now proposing to codify it in regulations.

Section 1001.1901, Scope and effect of exclusion: Some individuals and entities have mistakenly believed that merely obtaining a program provider number would automatically result in their reinstatement back into the programs. This has never been the case; an individual or entity must formally be reinstated by the OIG in order to again participate in the Medicare and State health care programs. We would revise paragraph (b)(1) of this section, regarding the effect of an exclusion on excluded individuals and entities, to specifically clarify existing OIG policy that an excluded individual or entity

continues to be excluded until officially reinstated by the OIG, regardless of whether he, she or it has obtained a program number—either as an individual or as a member of a group—prior to their being reinstated for program participation. (A similar clarification would be made in §§ 1001.3001(a)(1) and 1001.3002(a) to indicate that the obtaining of a program provider number does not in and of itself reinstate eligibility for an entity or an individual, either as a single person or as a member of a group.) The word ''person'' appearing in the first sentence of paragraph (b)(1) would be revised to read as ''individual or entity.''

In addition, we would revise paragraph (b)(3) of this section to clearly indicate that submitting claims, or causing claims to be submitted or payment to be made by the programs for items or services that were furnished, ordered or prescribed by the excluded individual or entity—including any administrative and management services or salaries—may serve as the basis for denying the individual's or entity's reinstatement back into the programs. The addition of this language would serve to more clearly define what an excluded individual or entity can do, and would codify and re-enforce existing OIG policy that is currently contained in the exclusion notice letters sent to individuals and entities.

We are also proposing to add a new § 1001.1901(c)(4) that serves to codify the current HCFA policy with regard to payment to suppliers for claims after notice of an excluded provider's exclusion. Specifically, we would reiterate that HCFA will not pay for any claims submitted by, or for items or services ordered or prescribed by, an excluded provider for dates of service 5 days or more after the date that notice of the provider's exclusion was mailed by the contractor to the supplier.

Section 1001.2001, Notice of intent to exclude: We propose to delete existing paragraph (b) of § 1001.2001. The language currently states that if the OIG proposes to exclude an individual or entity in accordance with § 1001.701 or 1001.801, the individual or entity may submit a written request to present evidence or argument orally to the OIG. In eliminating the in-person hearing on these cases, the individual or entity would still have the opportunity to submit additional material for review to the OIG. The vast majority of cases for proposed exclusion are medical in nature, and while the OIG contracts for the review of medical records and related material, we do not retain an in-house medical review officer that would be readily accessible to hear and review such submitted material. We believe this existing provision does not represent an effective use of time and current OIG resources, and are therefore proposing to delete this language. This change would not diminish due process since the individual or entity retains the ability to challenge the OIG's proposed exclusion.

Section 1001.2002, Notice of exclusion: We are proposing to amend this section by adding a new paragraph (e) indicating, consistent with existing OIG policy, that the notice letter to the affected individual or entity could be amended should any additional information come to our attention or wrongdoing occur subsequent to the issuance of the initial notice letter. We are also proposing to make a similar clarifying change in § 1005.15 by revising paragraph (f) to explicitly state that, with certain exceptions, additional items or information—including any aggravating and mitigating circumstances that arose or became known subsequent to the issue of the notice letter—may be introduced by either party.

Section 1001.2003, Notice of proposal to exclude: A discrepancy currently existing between the language in § 1001.2003(a)—indicating that an exclusion is effective 60 days after the date of notice, unless an individual or entity files a written request for a hearing—and the language set forth in § 1005.2(c)—that a request for a hearing is to be filed 60 days after the notice letter is received by the respondent, which is presumed to be 5 days after the date of the notice unless there is a reasonable showing to the contrary. To be consistent in our language and intent, we would revised § 1001.2003(a) to reference the language and procedure set forth in § 1005.(c). i.e., that a request for a hearing be made 60 days after service of the notice letter.

Section 1001.2005, Notice to State licensing agencies: We propose deleting paragraph (b) of this section. While the regulations would still indicate that the Department will notify the appropriate State or local agencies or authorities responsible for licensing or certification of the circumstances leading to an individual's or entity's exclusion, we do not want to be locked into a specific notification process if alternative methods can be considered for notifying provider licensing and certification boards.

Section 1001.2006, Notice to others regarding exclusion: Section 221 of HIPAA established a new national health care fraud and abuse data collection program for the reporting of final adverse actions against health care providers, suppliers and practitioners. As a result, we would revise § 1001.2006(a) to indicate that, in addition to the general public and program beneficiaries, the Department will not also provide notice of the exclusion and its effective date to the new Adverse Action Data Bank.

Section 1001.3001, Timing and method of request for reinstatement: Because there has been some misunderstanding as to when an exclusion period ends, in addition to clarifying that the act of obtaining a provider number does not reinstate program eligibility (see discussion of § 1001.1901 above), we would also revise paragraphs (1) (a) and (b) to indicate that an excluded individual or entity (other than those excluded in accordance with §§ 1001.1001, 1001.1051 and 1001.1101) may submit a request for reinstatement to the OIG only *after the minimum period of exclusion* specified in the notice of exclusion has expired. A conforming change would also be made in § 1001.3002(a)(1).

Section 1001.3002, Basis for reinstatement: Section 214(b) of HIPAA has amended the statute by indicating that in making a determination on whether to sanction a practitioner or other person—based on a recommendation from a Peer Review Organization (PRO)—for failing to comply with statutory obligations relating to quality and medical necessity of health care services, the Department will no longer to be required to prove that the practitioner or other person was either unwilling or unable to comply with such obligations. While this statutory change is being addressed through separate rulemaking addressing the PRO sanctions process and changes to part 1004 of our regulations, we would make a conforming change to paragraph (b) of § 1001.3002 to delete the ''unwillingness and inability'' factor as a basis for consideration by the OIG in making a reinstatement determination.

Section 1002.3, Disclosure by providers; information on persons convicted of crimes: Under part 1002, which addresses State-initiated exclusions from the Medicaid program, we would revise § 1002.3(b) to codify in regulations as new paragraph (b)(3) concerning Medicaid State agency requirements for notification to the OIG. Specifically, the new paragraph would clearly state that the Medicaid agency is required to promptly notify the OIG of *any and all* actions it takes to limit the individual's or entity's ability to participate in its program. Th is would include, but would not be limited to: (1)

Suspension actions, (2) settlement agreements and (3) situations where the individual or entity may have voluntarily agreed to withdraw from the program in order to avoid a formal sanction action.

III. Regulatory Impact Statement

Executive Order 12866 and Regulatory Flexibility Act

The Office of Management and Budget (OMB) has reviewed this proposed rule in accordance with the provisions of Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and has determined that it does not meet the criteria for a significant regulatory action. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, safety distributive and equity effects). In addition, under the Regulatory Flexibility Act, if a rule has a significant economic effect on a number of small businesses the Secretary must specifically consider the economic effect of a rule on small business entities and analyze regulatory options that could lessen the impact of the rule.

The provisions set forth in this proposed rulemaking, for the most part, implement statutory requirements, and are designed to lengthen and broaden the scope of the OIG's authority to include individuals and entities from the Medicare and the State health care programs. As indicated above, these provisions would implement the new statutory requirements regarding the period of exclusion for some individuals and entities by: (1) Broadening the minimum 5-year mandatory exclusion authority to cover felony convictions under Federal, State or local law relating to health care fraud, and (2) establishing minimum periods of exclusion for certain permissive exclusions. We believe that the number of individuals and entities effected by this lengthening of exclusions would be minimal.

Further, while the provisions in this rule serve to clarify the OIG's sanction authorities by (1) Establishing a new permissive exclusion applicable to individuals having majoring ownership interest in (or significant control over the operations of) an entity convicted of a program-related offenses; (2) clarifying what would constitute patient abuse or neglect for purposes of exclusion; and (3) setting forth a definition for ''furnished'' that would apply to individuals and entities that provide or supply items or services directly or indirectly, we likewise believe the increase in the number of exclusion cases will be small. Specifically, while the statutory requirement to impose exclusions in cases of certain types of convictions has been broadened in sections 1128 (a)(3) and (a)(4) of the Act, the process for excluding individuals and entities who are convicted in accordance with the new requirements remains essentially the same. Cases to be processed under the new mandatory provisions set forth in sections 1128 (a)(3) and (a)(4) for the minimum mandatory 5-year exclusion were previously processed under the permissive authority provisions in sections 1128 (b)(1) and (b)(3) of the Act, with a benchmark of 3 years. As a result, while there may be minor increases in the number of mandatory exclusions imposed, we see no significant increase or decrease in the number of these cases. Similarly, the clarification of what constitutes patient neglect or abuse should not result in a significant increase in the number of cases under section 1128(a)(2) of the Act, but merely support prior findings of abuse and neglect while delivering health care services.

In addition, we do not anticipate a significant workload resulting from the implementation of section 1128(b)(15) of the Act, and proposed § 1001.1051 of these regulations, as the requirements for effectuating this authority are rather stringent at the present time, and will limit the number of exclusions to be implemented under this authority.

Since the vast majority of individuals, organizations and entities addressed by these regulations do not engage in such prohibited activities and practices, we believe that any aggregate economic effect of these revised exclusion regulations will be minimal, affecting only those limited few who engage in prohibited behavior in violation of the statute. As such, this proposed rule should have no significant economic impact. Similarly, while some sanctions may have an impact on small entities, it is the nature of the violation and not the size of the entity that will result in an action by the OIG. We believe that the aggregate economic impact of this rulemaking should be minimal, affecting only those limited few who have chosen to engage in prohibited arrangements, schemes or practices in violation of statutory intent. Therefore, we have concluded, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a number of small business entities, and that a regulatory flexibility analysis is not required for this rulemaking.

Paperwork Reduction Act

Section 1002.3 of this rulemaking contains information collection requirements that require approval by OMB. We are required to solicit public comments under section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. Specifically, we are inviting comments on (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the estimate of the burden of the collection of information; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on practitioners and other persons, including through the use of automated collection techniques or other forms of information technology.

Title: Information on persons convicted of crimes.

Summary of the collection of information: In order to effectuate the requirements of section 1128(b)(5) of the Social Security Act, authorizing the OIG to exclude individuals and entities that are sanctioned by a Federal or State agency (including State Medicaid agencies), a State Medicaid agency must promptly notify the OIG of any action it takes to limit an individual's or entity's participation in Medicaid. To implement this statutory authority, we are clarifying in § 1002.3 of the regulations the scope of conduct constituting a basis for State Medicaid notice of denials of participation or imposition of a sanction. Specifically, under section 1902(a) (39) and (41) of the Social Security Act, State agencies are required to notify the Secretary when a provider has been denied participation status in Medicaid, or has been terminated, suspended or ''otherwise sanctioned'' under the Medicaid program. We are clarifying what actions fall within the ambit of these provisions. The reporting obligation set forth in § 1002.3 is consistent with the requirements of the statute.

Respondents: The ''respondents'' for the collection of information described in § 1002.3 are the individual State Medicaid agencies.

Estimated number of respondents: The OIG annually receives approximately 500 notifications from State Medicaid agencies regarding actions taken against an individual or entity. While we are specifically clarifying that these actions are to

include any suspension actions, settlement agreements and situations where an individual or entity voluntarily withdraws from the program to avoid a formal sanction, we believe that the number of actions reported by the State agencies to the Secretary will remain low.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: We believe that the burden on the State Medicaid agencies in preparing the notification to the OIG will be minimal. We estimate that the average burden for each submitted notification to the OIG will be less than one-half hour. The total burden for this information collection activity is estimated not to exceed 250 hours annually.

Comments on these information collection activities should be sent to both:

Cynthia Agens Bauer, OS Reports Clearance Officer, ASMB Budget Office, Room 503–H, Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201, FAX: (202) 690–6352

Allison Herron Eydt, OIG Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, 715 17th Street, N.W., Washington, D.C. 20053, FAX: (202) 395–6974

Comments on these paperwork reduction requirements should be submitted to the above individuals within 60 days following the **Federal Register** publication of this proposed rule.

List of Subjects

42 CFR Part 1001

Administrative practice and procedure, Fraud, Health facilities, Health professions, Medicaid, Medicare.

42 CFR Part 1002

Fraud, Grant programs—health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping.

42 CFR Part 1005

Administrative practice and procedure, Fraud, Penalties.

Accordingly, 42 CFR Parts 1000, 1001, 1002 and 1005 would be amended as set forth below:

A. Part 1000 would be amended as follows:

PART 1000—[AMENDED]

1. The authority citation for part 1000 would continue to read as follows:

Authority: 42 U.S.C. 1320 and 1395hh.

2. Section 1000.10 would be amended by republishing the introductory paragraph and by revising the definition for the term *Furnished* to read as follows:

§ 1000.10 General definitions.

In this chapter, unless the context indicates otherwise—

* * * * *

Furnished refers to items or services provided or supplied, directly or indirectly, by any individual or entity. This includes items and services manufactured, distributed or otherwise provided by individuals or entities that do not directly submit claims to Medicare or State health care programs, but that supply items or services to providers, practitioners or suppliers who submit claims to these programs for such items or services.

* * * * *

B. Part 1001 would be amended as follows:

PART 1001—[AMENDED]

1. The authority citation for part 1001 would be revised to read as follows:

Authority: 42 U.S.C. 1302, 1320a–7, 1320a–7b, 1395u(j), 1359u(k), 1395y(d), 1395y(e), 1395cc(b)(2) (D), (E) and (F), and 1395hh; and sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note).

(2) Section 1001.2 would be amended by revising the definitions for the terms *Exclusion, Professionally recognized standards of health care,* and *Sole source of essential specialized services in the community;* and by adding definitions for the terms *Incarceration* and *Patient* to read as follows:

§ 1001.2 Definitions.

* * * * *

Exclusion means that items and services furnished, ordered or prescribed by a specified individual or entity will not be reimbursed under Medicare or the State health care programs until the individual or entity is reinstated by the OIG.

* * * * *

Incarceration means imprisonment or any type of confinement with or without supervised release, including, but not limited to, community confinement, house arrest and home detention.

* * * * *

Patient means any individual who is receiving health care items or services, including any item or service provided to meet his or her physical, mental or emotional needs or well-being, whether or not reimbursed under Medicare or a State health care program and regardless of the location in which such item or service is provided.

* * * * *

Professionally recognized standards of health care are Statewide or national standards of care, whether in writing or not, that professional peers of the individual or entity whose provision of care is an issue, recognized as applying to those peers practicing or providing care within a State. When the Department has declared a treatment modality not to be safe and effective, practitioners who employ such a treatment modality will be deemed not to meet professionally recognized standards of health care. This definition shall not be construed to mean that all other treatments meet professionally recognized standards.

* * * * *

Sole source of essential specialized services in the community means that an individual or entity—

(a) Is the only practitioner, supplier or provider furnishing specialized services in an area designated by the Health Resources Services Administration as a health professional shortage area for that medical specialty, as listed in 42 CFR part 5, appendices B–F;

(b) Is a sole community hospital, as defined in § 412.92 of this title; or

(c) Is the only source of specialized services in a reasonably defined service area where services by a non-specialist could not be substituted for the source without jeopardizing the health or safety of beneficiaries.

* * * * *

3. Section 1001.101 would be revised to read as follows:

§ 1001.101 Basis for liability.

The OIG will exclude any individual or entity that—

(a) Has been convicted of a criminal offense related to the delivery of an item or service under Medicare or a State health care program, including the performance of management or administrative services relating to the delivery of items or services under any such program;

(b) Has been convicted, under Federal or State law, of a criminal offense related to the neglect or abuse of a patient, in connection with the delivery of a health care item or service, including any offense that the OIG concludes entailed, or resulted in, neglect or abuse of patients (the delivery of a health care item or service includes the provision of any item or service to an individual to meet his or her physical, mental or emotional needs or well-being, whether or not reimbursed under Medicare or a State health care program);

(c) Has been convicted, under Federal or State law, of a felony that occurred

after August 21, 1996 relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other misconduct—

(1) In connection with the delivery of a health care item or service, including the performance of management or administrative services relating to the delivery of such items or services, or

(2) With respect to any act or omission in a health care program (other than Medicare or the State health care programs) operated by, or financed in whole or in part, by any Federal, State or local government agency; or

(d) Has been convicted, under Federal or State law, of a felony that occurred after August 21, 1996 relating to the unlawful manufacture, distribution, prescription or dispensing of a controlled substance, as defined under Federal or State law. This applies to any individual or entity that—

(1) Is, or has ever been, a health care practitioner, provider or supplier;

(2) Holds, or has held, a direct or indirect ownership or control interest (as defined in section 1124(a)(3) of the Act) in an entity that is a health care provider or supplier, or is, or has ever been, an officer, director, agent or managing employee (as defined in section 1126(b) of the Act) of such an entity; or

(3) Is, or has ever been, employed in any capacity in the health care industry.

4. Section 1001.102 would be amended by revising paragraph (b); republishing the introductory text of paragraph (c); and revising paragraph (c)(3) to read as follows:

§ 1001.102 Length of exclusion.

* * * * *

(b) Any of the following factors may be considered to be aggravating and a basis for lengthening the period of exclusion—

(1) The acts resulting in the conviction, or similar acts, resulted in financial loss to a government program or to one or more entities of $1,500 or more. (The entire amount of financial loss to such programs or entities, including any amounts resulting from similar acts not adjudicated, will be considered regardless of whether full or partial restitution has been made);

(2) The acts that resulted from in the conviction, or similar acts, were committed over a period of one year or more;

(3) The acts that resulted in the conviction, or similar acts, had a significant adverse physical, mental or financial impact on one or more program beneficiaries or other individuals;

(4) In convictions involving patient abuse or neglect, the action that resulted in the conviction was premeditated, was part of a continuing pattern or behavior, or consisted of non-consensual sexual acts;

(5) The sentence imposed by the court included incarceration;

(6) Whether the individual or entity has a documented history of criminal, civil or administrative wrongdoing;

(7) The individual or entity has at any time been overpaid a total of $1,500 or more by Medicare or State health care programs, or other third-party payers, as a result of improper billings; or

(8) Whether the individual or entity was convicted of other offenses besides those which formed the basis for the exclusion, or has been the subject of any other adverse action by any Federal, State or local government agency or board, even if the adverse action is based on the same set of circumstances that serves as the basis for imposition of the exclusion.

(c) Only if any of the aggravating factors set forth in paragraph (b) of this section justifies an exclusion longer than 5 years, may mitigating factors be considered as the basis for reducing the period of exclusion to no less than 5 years. Only the following factors may be considered mitigating—

* * * * *

(3) The individual's or entity's cooperation with Federal or State officials resulted in—

(i) Others being convicted or excluded from Medicare or any of the State health care programs,

(ii) Additional cases being investigated or reports being issued by the appropriate law enforcement agency identifying program vulnerabilities or weaknesses, or

(iii) The imposition against anyone of a civil money penalty or assessment under part 1003 of this chapter.

5. Section 1001.201 would be amended by revising the section heading; revising paragraph (a); republishing the introductory text of paragraph (b)(2), revising paragraphs (b)(2) (iv) and (v), and adding a new paragraph (b)(2)(vi); and by republishing the introductory text of paragraph (b)(3) and revising paragraphs (b)(3)(i) and (b)(3)(iii) to read as follows:

§ 1001.201 Conviction relating to fraud.

(a) *Circumstance for exclusion.* The OIG may exclude an individual or entity convicted under Federal or State law of—

(1) A misdemeanor relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct—

(i) In connection with the delivery of any health care item or service, including the performance of management or administrative services relating to the delivery of such items or services, or

(ii) With respect to any act or omission in a health care program, other than Medicare or a State health care program, operated by, or financed in whole or in part by, any Federal, State or local government agency; or

(2) Fraud, theft, embezzlement, breach or fiduciary responsibility, or other financial misconduct with respect to any act or omission in a program, other than a health care program, operated by or financed in whole or in part by any Federal, State or local government agency.

(b) *Length of exclusion.* * * *

(2) Any of the following factors may be considered to be aggravating and a basis for lengthening the period of exclusion—

* * * * *

(iv) The sentence imposed by the court included incarceration;

(v) Whether the individual or entity has a documented history of criminal, civil or administrative wrongdoing; or

(vi) Whether the individual or entity was convicted of other offenses besides those which formed the basis for the exclusion, or has been the subject of any other adverse action by any Federal, State or local government agency or board, even if the adverse action is based on the same set of circumstances that serves as the basis for the imposition of the exclusion.

(3) Only the following factors may be considered as mitigating and a basis for reducing the period of exclusion—

(i) The individual or entity was convicted of 3 or fewer offenses, and the entire amount of financial loss to a government program or to other individuals or entities due to the acts that resulted in the conviction and similar acts is less than $1,500;

* * * * *

(iii) The individual's or entity's cooperation with Federal or State officials resulted in—

(A) Others being convicted or excluded from Medicare or any of the State health care programs,

(B) Additional cases being investigated or reports being used by the appropriate law enforcement agency identifying program vulnerabilities or weaknesses, or

(C) The imposition of a civil money penalty against others; or

* * * * *

6. Section 1001.301 would be amended by republishing the

introductory text of paragraph (b)(2); revising paragraphs (b)(2) (iv) and (v); by adding a new paragraph (b)(2)(vi); by republishing the introductory text of paragraph (b)(3); and by revising paragraph (b)(3)(ii) to read as follows:

§ 1001.301 Conviction relating to obstruction of an investigation.

* * * * *

(b) *Length of exclusion.* * * *

(2) Any of the following factors may be considered to be aggravating and a basis for lengthening the period of exclusion—

* * * * *

(iv) The sentence imposed by the court included incarceration;

(v) Whether the individual or entity has a documented history of criminal, civil or administrative wrongdoing; or

(vi) Whether the individual or entity was convicted of other offenses besides those which formed the basis for the exclusion, or has been the subject of any other adverse action by any Federal, State or local government agency or board, even if the adverse action is based on the same set of circumstances that serves as the basis for the imposition of the exclusion.

(3) Only the following factors may be considered as mitigating and a basis for reducing the period of exclusion—

* * * * *

(ii) The individual's or entity's cooperation with Federal or State officials resulted in—

(A) Others being convicted or excluded from Medicare or any of the State health care programs,

(B) Additional cases being investigated or reports being issued by the appropriate law enforcement agency identifying program vulnerabilities or weaknesses, or

(C) The imposition of a civil money penalty against others; or

* * * * *

7. Section 1001.401 would be amended by revising the section heading; revising paragraph (a); by republishing the introductory text of paragraph (c)(2); by revising paragraphs (c)(2) (iii) and (iv); by adding a new paragraph (c)(2)(v); by republishing introductory paragraph (c)(3); and by revising paragraph (c)(3)(i) to read as follows:

§ 1001.401 Misdemeanor conviction relating to controlled substances.

(a) *Circumstance for exclusion.* The OIG may exclude an individual or entity convicted under Federal or State law of a misdemeanor relating to the unlawful manufacture, distribution, prescription or dispensing of a controlled substance, as defined under Federal or State law. This section applies to any individual or entity that—

(1) Is, or has ever been, a health care practitioner, provider or supplier;

(2) Holds or has held a direct or indirect ownership or control interest, as defined in section 1124(a)(3) of the Act, in an entity that is a health care provider or supplier, or is or has been an officer, director, agent or managing employee, as defined in section 1126(b) of the Act, of such an entity; or

(3) Is, or has ever been, employed in any capacity in the health care industry.

* * * * *

(c) *Length of exclusion.* * * *

(2) Any of the following factors may be considered to be aggravating and a basis for lengthening the period of exclusion—

* * * * *

(iii) The sentence imposed by the court included incarceration;

(iv) Whether the individual or entity has a documented history of criminal, civil or administrative wrongdoing; or

(v) Whether the individual or entity was convicted of other offenses besides those which formed the basis for the exclusion, or has been the subject of any other adverse action by any other Federal, State or local government agency or board, even if the adverse action is based on the same set of circumstances that serves as the basis for the imposition of the exclusion.

(3) Only the following factors may be considered as mitigating and a basis for shortening the period of exclusion—

(i) The individual's or entity's cooperation with Federal or State officials resulted in—

(A) Others being convicted or excluded from Medicare or any of the State health care programs,

(B) Additional cases being investigated or reports being issued by the appropriate law enforcement agency identifying program vulnerabilities or weaknesses, or

(C) The imposition of a civil money penalty against others; or

* * * * *

8. Section 1001.501 would be amended by revising paragraph (b)(1); republishing the introductory text of paragraph (b)(2), revising paragraphs (b)(2) (ii) and (iii), and adding a new paragraph (b)(2)(iv); by republishing the introductory text of paragraph (b)(3) and revising paragraph (b)(3)(i); and by deleting paragraph (c) to read as follows:

§ 1001.501 License revocation or suspension.

* * * * *

(b) *Length of exclusion.* (1) An exclusion imposed in accordance with this section will not be for a period of time less than the period during which an individual's or entity's license is revoked, suspended or otherwise not in effect as a result of, or in connection with, a State licensing agency action.

(2) Any of the following factors may be considered aggravating and a basis for lengthening the period for exclusion—

* * * * *

(ii) Whether the individual or entity has a documented history of criminal, civil or administrative wrongdoing;

(iii) The acts, or similar acts, had or could have had a significant adverse impact on the financial integrity of the programs; or

(iv) The individual or entity has been the subject of any other adverse action by any other Federal, State or local government agency or board, even if the adverse action is based on the same set of circumstances that serves as the basis for the imposition of the exclusion.

(3) Only if any of the aggravating factors listed in paragraph (b)(2) of this section justifies a longer exclusion may mitigating factors be considered as a basis for reducing the period of exclusion to a period not less than that set forth in paragraph (b)(1) of this section. Only the following factors may be considered mitigating—

(i) The individual's or entity's cooperation with a State licensing authority resulted in—

(A) The sanctioning of other individuals or entities, or

(B) Additional cases being investigated or reports being issued by the appropriate law enforcement agency identifying program vulnerabilities or weaknesses; or

* * * * *

9. Section 1001.601 would be amended by revising paragraph (b) to read as follows:

§ 1001.601 Exclusion or suspension under a Federal or State health care program.

* * * * *

(b) *Length of exclusion.* (1) An exclusion imposed in accordance with this section will not be for a period of time less than the period during which the individual or entity license is excluded or suspended from a Federal or State health care program.

(2) Any of the following factors may be considered aggravating and a basis for lengthening the period of exclusion—

(i) The acts that resulted in the exclusion, suspension or other sanction under the Federal or State healthy care program had, or could have had, a significant adverse impact on Federal or State health care programs or the

beneficiaries of those programs or other individuals;

(ii) Whether the individual or entity has a documented history of criminal, civil or administrative wrongdoing; or

(iii) The individual or entity has been the subject of any other adverse action by any Federal, State or local government agency or board, even if the adverse action is based on the same set of circumstances that serves as the basis for the imposition of the exclusion.

(3) Only if any of the aggravating factors set forth in paragraph (b)(2) of this section justifies a longer exclusion may mitigating factors be considered as a basis for reducing the period of exclusion to a period not less than that set forth in paragraph (b)(1) of this section. Only the following factors may be considered mitigating—

(i) The individual or entity's cooperation with Federal or State officials resulted in—

(A) The sanctioning of other individuals or entities, or

(B) Additional cases being investigated or reports being issued by the appropriate law enforcement agency identifying program vulnerabilities or weaknesses; or

(ii) Alternative sources of the types of health care items or services furnished by the individual or entity are not available.

(4) If the individual or entity is eligible to apply for reinstatement in accordance with § 1001.3001 of this part, and the sole reason for the State denying reinstatement is the existing Medicare exclusion imposed by the OIG as a result of the original State action, the OIG will consider a request for reinstatement.

10. Section 1001.701 would be amended by republishing introductory paragraph (a) and revising paragraph (a)(1); revising paragraph (d)(1); and by republishing introductory paragraph (d)(2), revising paragraphs (d)(2) (iii) and (iv), and adding paragraph (d)(2)(v) to read as follows:

§ 1001.701 Excessive claims or furnishing of unnecessary or substandard items or services.

(a) *Circumstance for exclusion.* The OIG may exclude an individual or entity that has—

(1) Submitted, or caused to be submitted, bills or requests for payments under Medicare or any of the State health care programs containing charges or costs for items or services furnished that are substantially in excess of such individual's or entity's usual charges or costs for such items or services to any of their customers, clients or patients; or

* * * * *

(d) *Length of exclusion.* (1) An exclusion imposed in accordance with this section will be for a period of 3 years, unless aggravating or mitigating factors set forth in paragraphs (d)(2) and (d)(3) of this section form a basis for lengthening or shortening the period. In no case may the period be shorter than 1 year.

(2) Any of the following factors may be considered aggravating and a basis for lengthening the period of exclusion—

* * * * *

(iii) Whether the individual or entity has a documented history of criminal, civil or administrative wrongdoing;

(iv) The violation resulted in financial loss to Medicare or the State health care programs of $1,500 or more; or

(iv) The individual or entity has been the subject of any other adverse action by any Federal, State or local government agency or board, even if the adverse action is based on the same set of circumstances that serves as the basis for the imposition of the exclusion.

* * * * *

11. Section 1001.801 would be amended by revising paragraph (c)(1); and by republishing introductory paragraph (c)(2), revising paragraphs (c)(2) (iii) and (iv), and adding a new paragraph (c)(2)(v) to read as follows:

§ 1001.801 Failure of HMOs and CMPs to furnish medically necessary items and services.

* * * * *

(c) *Length of exclusion.* (1) An exclusion imposed in accordance with this section will be for a period of 3 years, unless aggravating or mitigating factors set forth in paragraphs (c)(2) and (c)(3) of this section form a basis of lengthening or shortening the period. In no case may the period be shorter than 1 year.

(2) Any of the following factors may be considered aggravating and a basis for lengthening the period of exclusion—

* * * * *

(iii) The entity's failure to provide a necessary item or service that had or could have had a serious adverse effect;

(iv) Whether the individual or entity has a documented history of criminal, civil or administrative wrongdoing; or

(v) The individual or entity has been the subject of any other adverse action by any Federal, State or local government agency or board, even if the adverse action is based on the same set of circumstances that serves as the basis for the imposition of the exclusion.

* * * * *

12. Section 1001.901 would be amended by republishing introductory paragraph (b), revising paragraph (b)(3), redesignating existing paragraph (b)(4) as (b)(5), and adding a new paragraph (b)(4) to read as follows:

§ 1001.901 False or improper claims.

* * * * *

(b) *Length of exclusion.* In determining the length of exclusion imposed in accordance with this section, the OIG will consider the following factors—

* * * * *

(3) Whether the individual or entity has a documented history of criminal, civil or administrative wrongdoing (The lack of any prior is to be considered neutral);

(4) The individual or entity has been the subject of any other adverse action by any Federal, State or local government agency or board, even if the adverse action is based on the same set of circumstances that serves as the basis for the imposition of the exclusion; or

(5) Other matters as justice may require.

13. Section 1001.951 would be amended by republishing introductory paragraph (b)(1), revising paragraph (b)(1)(iii), redesignating existing paragraph (b)(1)(iv) as (b)(1)(v), and adding a new paragraph (b)(1)(iv) to read as follows:

§ 1001.951 Fraud and kickbacks and other prohibited activities.

* * * * *

(b) *Length of exclusion.* (1) The following factors will be considered in determining the length of exclusion in accordance with this section—

* * * * *

(iii) Whether the individual or entity has a documented history of criminal, civil or administrative wrongdoing (The lack of any prior record is to be considered neutral);

(iv) The individual or entity has been the subject of any other adverse action by any Federal, State or local government agency or board, even if the adverse action is based on the same set of circumstances that serves as the basis for the imposition of the exclusion; or

* * * * *

§ 1001.953 [Removed]

14. Section 1001.953 would be removed.

15. Section 1001.1001 would be amended by republishing the heading for paragraph (a) and introductory paragraph (a)(2); and by revising the

definition for the term *agent* set forth in paragraph (a)(2) to read as follows:

§ 1001.1001 Exclusion of entities owned or controlled by a sanctioned person.

(a) *Circumstances for exclusion.*
* * *

(2) For purposes of this section, the term:

Agent means any person who has express or implied authority to obligate or act on behalf of an entity. The excluded individual may be considered an agent even if he or she has transferred ownership or control interest to his or her spouse or children. For example, if the excluded individual transfers control of an entity to his or her spouse, but still acts on behalf of the entity or exercises some control over the entity, the excluded individual would be an agent since he or she would have the implied authority to act on behalf of that entity.

* * * * *

16. A new § 1001.1051 would be added to read as follows:

§ 1001.1051 Exclusion of individuals with ownership or control interest in sanctioned entities.

(a) *Circumstance for exclusion.* The OIG may exclude any individual who—

(1) Has a direct or indirect ownership or control interest in a sanctioned entity, and who knows or should know (as defined in section 1128A(i)(6) of the Act) of the action constituting the basis for the conviction or exclusion set forth in paragraph (b) of this section; or

(2) Is an officer or managing employee (as defined in section 1126(b) of the Act) of such an entity.

(b) For purposes of paragraph (a) of this section, the term *sanctioned entity* means an entity that—

(1) Has been convicted of any offense described in §§ 1001.101 through 1001.401 of this part; or

(2) Has been terminated or excluded from participation in Medicare or a State health care program.

(c) *Length of exclusion.* (1) If the entity has been excluded, the length of the individual's exclusion will be for the same period as that of the sanctioned entity with which the individual has the prohibited relationship.

(2) If the entity was not excluded, the length of the individual's exclusion will be determined by considering the factors that would have been considered if the entity had been excluded.

(3) An individual excluded under this section may apply for reinstatement at any time in accordance with the procedures set forth in § 1001.3001.

17. Section 1001.1101 would be amended by revising paragraph (b)(3) to read as follows:

§ 1001.1101 Failed to disclose certain information.

* * * * *

(b) *Length of exclusion.* The following factors will be considered in determining the length of an exclusion under this section—

* * * * *

(3) Whether the individual or entity has a documented history of criminal, civil or administrative wrongdoing (The lack of any prior record is to be considered neutral);

* * * * *

18. Section 1001.1201 would be amended by revising paragraph (b)(4) to read as follows:

§ 1001.1201 Failure to provide payment information.

* * * * *

(b) * * *

(4) Whether the individual or entity has a documented history of criminal, civil or administrative wrongdoing (The lack of any prior record is to be considered neutral); and

* * * * *

19. Section 1001.1301 would be amended by revising paragraph (b)(2)(iv) to read as follows:

§ 1001.1301 Failure to grant immediate access.

* * * * *

(b) * * *

(2) * * *

* * * * *

(iv) Whether the entity has a documented history of criminal, civil or administrative wrongdoing (The lack of any prior record is to be considered neutral).

* * * * *

20. Section 1001.1401 would be amended by revising paragraph (b)(5) to read as follows:

§ 1001.1401 Violations of PPS corrective action.

* * * * *

(b) *Length of exclusion.* * * *

* * * * *

(5) Whether the individual or entity has a documented history of criminal, civil or administrative wrongdoing (The lack of any prior record is to be considered neutral).

21. Section 1001.1601 would be amended by revising paragraph (b)(1)(iv) to read as follows:

§ 1001.1601 Violations of the limitations on physician charges.

* * * * *

(b) *Length of exclusion.* (1) * * *

(iv) Whether the physicians has a documented history of criminal, civil or administrative wrongdoing (The lack of any prior record is to be considered neutral); and

* * * * *

22. Section 1001.1701 would be amended by revising paragraph (c)(1)(v) to read as follows:

§ 1001.1701 Billing for services of assistant at surgery during cataract operations.

* * * * *

(c) *Length of exclusion.* * * *

(v) Whether the physician has a documented history of criminal, civil or administrative wrongdoing (The lack of any prior record is to be considered neutral); and

23. Section 1001.1901 would be amended by revising paragraphs (b)(1) and (b)(3); revising existing paragraph (c)(4) and redesignating is as (c)(5); and by adding a new paragraph (c)(4) to read as follows:

§ 1001.1901 Scope and effect of exclusion.

* * * * *

(b) *Effect of exclusion on excluded individuals and entities.* (1) Unless and until an individual or entity is reinstated into the Medicare program in accordance with subpart F of this part, no payment will be made by Medicare or any of the State health care programs for any item or service furnished, on or after the effective date specified in the notice period, by an excluded individual or entity, or at the medical direction or on the prescription of a physician or other authorized individual who is excluded when the individual or entity furnishing such item or service knew, or had reason to know, of the exclusion. This section applies regardless of whether an individual or entity has obtained a program provider number, either as an individual or as a member of a group, prior to being reinstated.

* * * * *

(3) An excluded individual or entity that submits, or causes to be submitted, claims for items or services furnished during the exclusion period is subject to civil money penalty liability under section 1128A(a)(1)(D) of the Act, and criminal liability under section 1128B(a)(3) of the Act and other provisions. In addition, submitting claims, or causing claims to be submitted or payments to be made for items or services furnished, ordered or prescribed, including administrative and management services or salary, may serve as the basis for denying reinstatement to the programs.

(c) *Exceptions to paragraph (b)(1) of this section.*

* * * * *

(4) HCFA will not pay any claims submitted by, or for items or services ordered or prescribed by, an excluded provider for dates of service 5 days or more after that notice of the provider's exclusion was mailed by the contractor to the supplier.

(5) * * *

(ii) Notwithstanding paragraph (c)(5)(i) of this section, no claim for emergency items or services will be payable if such items or services were provided by an excluded individual who, through an employment, contractual or any other arrangement, routinely provides emergency health care items or services.

24. Section 1001.2001 would be revised to read as follows:

§ 1001.2001 Notice of intent to exclude.

(a) Except as provided in paragraph (b) of this section, if the OIG proposes to exclude an individual or entity in accordance with subpart C of this part, or in accordance with subpart B of this part where the exclusion is for a period exceeding 5 years, it will send written notice of its intent, the basis for the proposed exclusion the potential effect of an exclusion. Within 30 days of receipt of notice, which will be deemed to be 5 days after the date on the notice, the individual or entity may submit documentary evidence and written argument concerning whether the exclusion is warranted and any related issues.

(b) Exception. If the OIG proposes to exclude an individual or entity under the provisions of §§ 1001.1301, 1001.1401 or 1001.1501 of this part, paragraph (a) of this section will not apply.

(c) If an entity has a provider agreement under section 1866 of the Act, and the OIG proposes to terminate that agreement in accordance with section 1866(b)(2)(C) of the Act, the notice provided for in paragraph (a) of this section will so state.

25. Section 1001.2002 would be amended by adding a new paragraph (e) to read as follows:

§ 1001.2002 Notice of exclusion.

* * * * *

(e) No later than 15 days prior to the final exhibit exchanges required under § 1005.8 of this chapter, the OIG may amend its notice letter if information comes to light that justifies the imposition of a different period of exclusion other than the one proposed in the original notice letter.

26. Section 1001.2003 would be amended by revising introductory paragraph (a) to read as follows:

§ 1001.2003 Notice of proposal to exclude.

(a) Except as provided in paragraph (c) of this section, if the OIG proposes to exclude an individual or entity in accordance with §§ 1001.901, 1001.951, 1001.1601 or 1001.1701, it will send written notice of this decision to the affected individual or entity. The written notice will provide the same information set forth in § 1001.2002(c). If an entity has a provider agreement under section 1866 of the Act, and the OIG also proposes to terminate that agreement in accordance with section 1866(b)(2)(C) of the Act, the notice will so indicate. The exclusion will be effective 60 days after the receipt of the notice (as defined in § 1005.2 of this chapter) unless, within that period, the individual or entity files a written request for a hearing in accordance with part 1005 of this chapter. Such request must set forth—

* * * * *

27. Section 1001.2005 would be revised to read as follows:

§ 1001.2005 Notice to state licensing agencies.

HHS will promptly notify the appropriate State(s) or local agencies or authorities having responsibility for the licensing or certification of an individual or entity excluded (or directed to be excluded) from participation of the facts and circumstances of the exclusion.

28. Section 1001.2006 would be amended by republishing introductory paragraph (a); revising paragraphs (a)(1) and (a)(7); redesignating existing paragraph (a)(8) as (a)(9); and by adding a new paragraph (a)(8) to read as follows:

§ 1001.2006 Notice to others regarding exclusion.

(a) HHS will give notice of the exclusion and the effective date to the public, to beneficiaries (in accordance with § 1001.1901(c)), and, as appropriate, to—

(1) Any entity in which the excluded individual is known to be serving as an employee, administrator, operator, or in which the individual is serving in any other capacity and is receiving payment for providing services (The lack of this notice will not affect HCFA's ability to deny payment for services);

* * * * *

(7) The State and Area Agencies on Aging established under title III of the Older Americans Act;

(8) The Adverse Action Data Bank; and

* * * * *

29. Section 1001.3001 would be amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 1001.3001 Timing and method of request for reinstatement.

(a)(1) Except as provided in paragraphs (a)(2) and (a)(3) of this section or in § 1001.501(b)(4) of this part, an excluded individual or entity (other than those excluded in accordance with §§ 1001.1001, 1001.1051 and 1001.1501) may submit a written request for reinstatement to the OIG only after the minimum period of exclusion specified in the notice of exclusion has expired. Obtaining a program provider number does not reinstate eligibility.

(2) An entity excluded under § 1001.1001 of this part may apply for reinstatement prior to the minimum period of exclusion specified in the notice of exclusion by submitting a written request for reinstatement that includes documentation demonstrating that the standards set forth in § 1001.3002(c) have been met.

* * * * *

30. Section 1001.3002 would be amended by revising paragraph (a); republishing introductory paragraph (b), revising paragraphs (b) (3) and (4) and removing paragraph (b)(5); revising introductory paragraph (c); revising existing paragraph (d) and redesignating paragraphs (d), (e), and (f) as paragraphs (e), (f) and (g) respectively; and by adding a new paragraph (d) to read as follows:

§ 1001.3002 Basis for reinstatement.

(a)(1) The OIG will authorize reinstatement if it determines that—

(i) The minimum period of exclusion has expired;

(ii) There are reasonable assurances that the types of actions that formed the basis for the original exclusion have not recurred and will not recur; and

(iii) There is no additional basis under sections 1128 (a) or (b) or 1128A of the Act for continuation of the exclusion.

(2) Submitting claims or causing claims to be submitted or payments to be made by the programs for items or services furnished, ordered or prescribed, including administrative and management services or salary, may serve as the basis for denying reinstatement. This section applies regardless of whether an individual or entity has obtained a program provider number, either as an individual or as a member of a group, prior to being reinstated.

(b) In making the reinstatement determination, the OIG will consider—

* * * * *

(3) Whether all fines, and all debts due and owing (including overpayments) to any Federal, State or local government that relate to Medicare or any of the State health care programs, have been paid or satisfactory arrangements have been made to fulfill these obligations; and

(4) Whether HCFA has determined that the individual or entity complies with, or has made satisfactory arrangements to fulfill, all of the applicable conditions of participation or supplier conditions for coverage under the statutes and regulations.

(c) If the OIG determines that the criteria in paragraphs (a)(1) (ii) and (iii) of this section have been met, an entity excluded in accordance with § 1001.1001 will be reinstated upon a determination by the OIG that the individual whose conviction, exclusion or civil money penalty was the basis for the entity's exclusion—

* * * * *

(d) If the OIG determines that the criteria in paragraphs (a)(1) (ii) and (iii) of this section have been met, an individual excluded in accordance with § 1001.1051 will be reinstated upon a determination with paragraph (a) of this section of § 1001.3005.

(e) Reinstatement will not be effective until the OIG grants the request and provides notice under § 1001.3003(a) of this part. Reinstatement will be effective as provided in the notice.

(f) A determination with respect to reinstatement is not appealable or reviewable except as provided in § 1001.3004.

(g) An ALJ may not require reinstatement of an individual or entity in accordance with this chapter.

C. Part 1002 would be amended as follows:

PART 1002—[AMENDED]

1. The authority citation for part 1002 would continue to read as follows:

Authority: 42 U.S.C. 1302, 1320a–3, 1320a–5, 1320a–7, 1396(a)(4)(A), 1396(p)(1), 1396a(30), 1396a(39) 1396b(a)(6), 1396b(b)(3), 1396b(i)(2) and 1396b(q).

2. Section 1002.3 would be amended by revising paragraph (b)(2) and by adding a new paragraph (b)(3) to read as follows:

§ 1002.3 Disclosure by providers; information on persons convicted of crimes.

* * * * *

(b) *Notification to Inspector General.*

* * *

(2) The agency must promptly notify the Inspector General of any action it takes on the provider's application for participation in the program.

(3) The agency must also promptly notify the Inspector General of any action it takes to limit the ability of an individual or entity to participate in its program, regardless of what such an action is called. This includes, but is not limited to, suspension actions, settlement agreements and situations where an individual or entity voluntarily withdraws from the program to avoid a formal sanction.

* * * * *

3. Section 1002.203 would be amended by revising paragraph (a) to read as follows:

§ 1002.203 Mandatory exclusion.

(a) The State agency, in order to receive Federal financial participation (FFP), must provide that it will exclude from participation any HMO, or entity furnishing services under a waiver approved under section 1915(b)(1) of the Act, if such organization or entity—

(1) Could be excluded under §§ 1001.1001 or 1001.1051 of this chapter, or

(2) Has, directly or indirectly, a substantial contractual relationship with an individual or entity that could be excluded under §§ 1001.1001 or 1001.1051 of this chapter.

* * * * *

4. Section 1002.211 would be amended by revising paragraph (a) to read as follows:

§ 1002.211 Effect of exclusion.

(a) *Denial of payment.* Except as provided for in § 1001.1901 (c)(3), (c)(4) and (c)(5)(i) of this chapter, no payment may be made by the State agency for any item or service furnished on or after the effective date specified in the notice by an excluded individual or entity, or at the medical direction or on the prescription of a physician who is excluded when a person furnishing such item or service knew, or had reason to know, of the exclusion.

PART 1005—[AMENDED]

D. Part 1005 would be amended as follows:

1. The authority citation for part 1005 would continue to read as follows:

Authority: 42 U.S.C. 405(a), 405(b), 1302, 1320a–7, 1320a–7a and 1320c–5.

2. Section 1005.15 would be amended by revising introductory paragraph (f)(1) to read as follows:

§ 1005.15 The hearing and burden of proof.

* * * * *

(f)(1) A hearing under this part is not limited to specific items and information set forth in the notice letter to the petitioner or respondent. Subject to the 15-day requirement under § 1005.8, additional items and information, including aggravating or mitigating circumstances that arose or became known subsequent to the issuance of the notice letter, may be introduced by either party during its case-in-chief unless such information or items are—

* * * * *

Dated: March 13, 1997.

June Gibbs Brown,

Inspector General, Department of Health and Human Services.

Approved: June 18, 1997.

Donna E. Shalala,

Secretary.

[FR Doc. 97–23379 Filed 9–5–97; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1001

Negotiated Rulemaking Committee on the Shared Risk Exception; Meetings

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Meeting of Negotiated Rulemaking Committee.

SUMMARY: In accordance with the Federal Advisory Committee Act, this document announces the dates and location for the fourth and fifth set of meetings by the Negotiated Rulemaking Committee on the Shared Risk Exception. The purpose of this committee is to negotiate the development of an interim final rule addressing the shared risk exception to the Federal health care programs' anti-kickback provisions, as statutorily-mandated by section 216 of the Health Insurance Portability and Accountability Act of 1996.

DATES: The fourth series of meetings will be held from 9:00 a.m. to 5:00 p.m. on October 8 and 9, 1997, and from 9:00 a.m. to 2:00 p.m. on October 10, 1997. The fifth series of meetings will be held from 9:00 a.m. to 5:00 p.m. on November 19, 20 and 21, 1997.

ADDRESSES: The October meeting will be held in the OIG Conference Room, Room 5542, Cohen Building, 330 Independence Avenue, S.W.,

Washington, D.C. 20201. The November meeting will be held in Rooms 383 and 385, Hall of States Building of the National Association of Insurance Commissioners, 444 North Capitol Street, N.W., Washington, D.C. 20001.

FOR FURTHER INFORMATION CONTACT: Inquiries regarding these meetings should be addressed to Joel Schaer, OIG Regulations Officer, Office of Counsel to the Inspector General, Room 5518, Cohen Building, 330 Independence Avenue, S.W., Washington, D.C. 20201; or call (202) 619–0089.

SUPPLEMENTARY INFORMATION: The Negotiated Rulemaking Committee on the Shared Risk Exception has been established to provide advice and make recommendations to the Secretary of Health and Human Services with respect to the text or content of an interim final rule that will establish standards relating to the exception to the anti-kickback statute for risk-sharing arrangements, set forth in section 1128B(b)(3)(F) of the Social Security Act. The exception was enacted by section 216 of Public Law 104–191, the Health Insurance Portability and Accountability Act (HIPAA) of 1996. Section 216 of HIPAA provides that the Secretary will promulgate regulations that establish standards for the exception using an expedited negotiated rulemaking process.

The intent to form the negotiated rulemaking committee and the dates for the first two series of meetings held in June and July 1997 were announced in the **Federal Register** on May 23, 1997 (62 FR 28410). The third series of meetings is scheduled for September 9 and 10, 1997 (see 62 FR 39798 for times and location of the September meetings).

During the scheduled October and November meetings, the committee will continue to discuss issues relating to the development of the interim final rule and to generate and discuss options for resolving those issues.

The meetings will be open to the public without advanced registration. Public attendance at the October meeting may be limited to space available. Members of the public wishing to attend the October sessions may want to notify the contact person listed above in advance to expedite access to the Cohen Building. A summary of all proceedings of these meetings and relevant matters and other material will also be available for public inspection at the address listed above from the hours of 8:30 a.m. to 5:00 p.m., or can be accessed through the OIG web site (http://www.sbaonline.sba.gov/ignet/internal/hhs/hhs.html).

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. App. 2).

Dated: August 27, 1997.

June Gibbs Brown,

Inspector General.

[FR Doc. 97–23530 Filed 9–5–97; 8:45 am]

BILLING CODE 4150–04–P

Notices

Federal Register

Vol. 62, No. 173

Monday, September 8, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Alabama

AGENCY: Natural Resources Conservation Service (NRCS) in Alabama, U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Alabama for review and comment.

SUMMARY: It is the intention of NRCS in Alabama to issue conservation practice standards: Animal Trails and Walkways (575), Composting Facility (317), Conservation Cover (327), Fence (382), Heavy Use Area Protection (561), Nutrient Management (590), Portable Chemical Mixing Station (192), Prescribed Grazing (528A), Riparian Forest Buffer (391A), and Waste Utilization (633), in Section IV of the FOTG.

DATES: Comments must be received on or before October 8, 1997.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Ronnie D. Murphy, State Conservationist, Natural Resources Conservation Service (NRCS), 3381 Skyway Drive, P.O. Box 311, Auburn, AL 36830. Copies of the practice standards will be made available upon written request.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS in Alabama will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS in Alabama regarding disposition of those comments and a final determination of change will be made.

Ronnie D. Murphy,

State Conservationist, Natural Resources Conservation Service, Auburn, Alabama.

[FR Doc. 97–23674 Filed 9–5–97; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Science Advisory Board; Notice of establishment

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Notice of Establishment.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the General Services Administration (GSA) rule of Federal Advisory Committee Management, 41 CFR Part 101–6, and after consultation with GSA, the Secretary of Commerce has determined that the establishment of the National Oceanic and Atmospheric Administration (NOAA) Science Advisory Board (SAB) is in the public interest in connection with the performance of duties imposed on the Department by law.

The SAB will advise the Secretary, through the Under Secretary for Oceans and Atmosphere, on long- and short-range strategies for research, education, and application of science to resource management.

The SAB will consist of fifteen members to be appointed by the Under Secretary to assure a balanced representation among pre-eminent scientists, engineers, and educators and science policy experts representing the full breadth of NOAA's areas of responsibility.

The SAB will function solely as an advisory body, and in compliance with provisions of the Federal Advisory Committee Act. The charter will be filed under the Act, fifteen days from the date of publication of this notice. Interested persons are invited to submit comments regarding the establishment of this committee to the Office of the Chief Scientist, National Oceanic and Atmospheric Administration, 5128 HCHB, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–2977.

Dated: September 2, 1997.

Terry D. Garcia,

Acting Assistant Secretary of Commerce for Oceans and Atmosphere and Deputy Administrator.

[FR Doc. 97–23652 Filed 9–5–97; 8:45 am]

BILLING CODE 3510–12–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Meeting

Pursuant to the Sunshine Act (5 U.S.C. 552b), notice is hereby given of the following meeting of the Board of Directors of the Corporation for National and Community Service (Corporation).

DATE AND TIME: September 11, 1997, at 1 p.m.

PLACE: The meeting will be held via conference call.

STATUS: The meeting will be closed, pursuant to exemptions (4) and (9(b)) of the Government in the Sunshine Act. The basis for this closing has been certified by the Corporation's Acting General Counsel. A copy of the certification will be posted for public inspection at the Corporation's headquarters at 1201 New York Avenue NW, Suite 8200, Washington, DC 20525, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED: The Board of Directors of the Corporation will meet to deliberate on grant awards in the following areas: (1) AmeriCorps*State formula funding for the District of Columbia and (2) Learn & Serve America.

FOR FURTHER INFORMATION CONTACT: Rhonda Taylor, Assoc. Dir., Special Projects and Initiatives, Corporation for National Service, 1201 New York Avenue NW, 8th Floor, Washington, DC 20525. Telephone (202) 606–5000 ext. 282. (T.D.D. (202) 565–2799)).

Dated: September 3, 1997.

Stewart Davis,

Acting General Counsel.

[FR Doc. 97–23774 Filed 9–4–97; 10:47 am]

BILLING CODE 6050–28–U

DEPARTMENT OF DEFENSE

Notice and Request for Comments Regarding a Proposed Extension of an Approved Information Collection Requirement

AGENCY: Department of Defense (DoD).

SUMMARY: In compliance with Section 3506(c)(2)(A) of Public Law 104–13, the Paperwork Reduction Act of 1995, DoD announces the proposed extension of a public information collection and seeks public comment on the provisions thereof.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. This information collection requirement is currently approved by the Office of Management and Budget (OMB) for use through March 31, 1998, under OMB Control Number 0704–0267. DoD proposes that OMB extend its approval for use through March 31, 2001.

DATES: Consideration will be given to all comments received by November 7, 1997.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to: Defense Acquisition Regulations Council, *Attn:* Ms. Sandra Haberlin, PSUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, D.C. 20301–3062. Telefax number (703) 602–0350. Please cite OMB Control Number 0704–0267 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Haberlin, (703) 602–0131. A copy of the information collection requirements contained in the DFARS test is available electronically via the Internet at: http://www.dtic.mil/dfars/. Paper copies of the information collection requirements may be obtained from Ms. Sandra Haberlin, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, D.C. 20301–3062.

Title, Associated Forms, and Associated OMB Control Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 230, Cost Accounting Standards, and DD Form 1861; OMB Control Number 0704–0267.

Needs and Uses: It is DoD policy to encourage contractor investment in facilities, which may lead, under DoD contracts, to increased productivity and reduced costs through the use of modern manufacturing technology. To motivate aggressive capital investment, DoD rewards contractors by recognizing contract facilities capital cost of money (CFCCM) and facilities capital employed in establishing the price of certain negotiated defense contracts, when such contracts are priced on the basis of cost analysis. DD Form 1861, Contract Facilities Capital Cost of Money, is used to compute these two elements of price. The contracting officer may require information from the contractor to complete this form.

Affected Public: Businesses or other for-profit entities.

Annual Burden Hours: 750.

Number of Respondents: 75.

Responses Per Respondent: 1.

Annual Responses: 75.

Average Burden Per Response: 10 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The information collection includes requirements relating to DFARS Part 230, Cost Accounting Standards. DD Form 1861, Contract Facilities Capital Cost of Money, computes the CFCCM and facilities capital employed using information provided by Form CASB–CMF and certain other information provided directly by the contractor. The CFCCM amount is used to help establish a price objective in negotiated contracts. The facilities capital employed amount is carried forward to DD Form 1547, Record of Weighted Guidelines Method Application, for the purpose of developing profit objectives on defense contracts when the Weighted Guidelines method is used. DFARS 230.7004–2, DD Form 1861, indicates that (1) completion of the DD Form 1861 requires information not included on the Form CASB–CMF; and (2) the contracting officer could request the information through a solicitation provision.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 97–23659 Filed 9–5–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0034]

Submission for OMB Review; Comment Request Entitled Examination of Records by Comptroller General and Contract Audit

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0034).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Examination of Records by Comptroller General/Audit Negotiation now retitled Examination of Records by Comptroller General and Contract Audit. A request for public comments was published at 62 FR 35789, July 2, 1997. No comments were received.

DATES: Comment Due Date: October 8, 1997.

FOR FURTHER INFORMATION CONTACT: Jerry Olson, Federal Acquisition Policy Division, GSA (202) 501–3221.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washingon, DC 205503, and a copy to General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0034 in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Audit and Records-Negotiation clause, 52.215–2; Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items clause, 52.212–5(d); and Audit and Records-Sealed Bidding clause, 52.214–26, implement the requirements of 10 U.S.C. 2313, 41 U.S.C. 254, and 10 U.S.C. 2306. The

statutory requirements are that the Comptroller General and/or agency shall have access to, and the right to, examine certain books, documents and records of the contractor for a period of 3 years after final payment. The record retention periods required of the contractor in the clauses are for compliance with the aforementioned statutory requirements. The information must be retained so that audits necessary for contract surveillance, verification of contract pricing, and reimbursement of contractor costs can be performed.

B. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, 19,142; hours per recordkeeper, 3.34; total recordkeeping burden hours, 63,934; recordkeeping retention period, 3 years.

Obtaining Copies of Proposals

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0034 in all correspondence.

Dated: September 3, 1997.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 97–23679 Filed 9–5–97; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive or Partially Exclusive License to Boron Biologicals

AGENCY: U.S. Army Research Laboratory, DOD.

ACTION: Notice of intent.

SUMMARY: In compliance with 37 CFR 404 *et seq.*, the Department of the Army hereby gives notice of its intent to grant to *Boron Biologicals, Inc.*, a corporation having its principle place of business at 620 Hutton Street, Raleigh, NC, 27606–1490, an exclusive or partially exclusive license under U.S. Patent 4,867,957, ''Process for Making Polyphosphazenes'', issued 19 Sep 1989. Anyone wishing to object to the granting of these licenses has 60 days from the date of this notice to file written objections along with supporting evidence, if any.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: AMSRL–CS–TT/Bldg. 434, Aberdeen Proving Ground, Maryland 21005–5425, Telephone: (410) 278–5028.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–23673 Filed 9–5–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–715–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

September 2, 1997.

Take notice that on August 27, 1997, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed in Docket No. CP97–715–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate the facilities necessary to establish three additional points of delivery to existing customers for firm transportation service under Columbia's blanket certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia proposes to construct and operate the necessary facilities to establish three new points of delivery for firm transportation service under part 284 of the Commission's regulations and existing authorized Rate Schedules and within certificated entitlements, as follows:

Customer/Point location	Residential	Estimated day design quantity (Dth)	Estimated annual quantity (Dth)
Columbia Gas of Ohio, Inc. Holmes County, Ohio	1	1.5	150
Mountaineer Gas Company Putnam County, West Virginia	1	1.5	150
Lincoln County, West Virginia	1	1.5	150

Columbia estimates that the cost to install the new taps to be approximately $150 per tap and will be treated as an O&M expense.

Columbia states that the quantities to be provided through the new delivery points will be within Columbia's authorized level of services.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–23668 Filed 9–5–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–713–000]

Cove Point LNG Limited Partnership; Notice of Request Under Blanket Authorization

September 2, 1997.

Take notice that on August 25, 1997, Cove Point LNG Limited Partnership (Cove Point), 2100 Cove Point Road, Lusby, Maryland 20657, filed in Docket No. CP97–713–000, a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and

157.211) for authorization to construct and operate a new point of delivery to Washington Gas Light Company (WGL) in Charles County, Maryland, under Cove Point's blanket certificate issued in Docket No. CP94–59–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Cove Point requests authorization to construct and operate a delivery point, identified as the Gardiner Road Tap, to be located in Charles County, Maryland. Cove Point describes the Gardiner Road Tap as two 16-inch taps to be located on either side of a check valve located on Cove Point's 36-inch pipeline at or near Gardiner Road at the intersection of the Cove Point Pipeline and the facilities to be constructed by WGL. Cove Point says that WGL's facilities, upon construction, will be interconnected to the Cove Point Pipeline by the Gardiner Road Tap. Cove Point indicates it will provide service through this delivery point pursuant to authorized rate schedules and within certificated entitlements as shown below:

Customer	Rate schedule	Estimated design day quantity (Dth)	Estimated annual quantity (Dth)
WGL	FTS	100,000	400,000
	FPS–1	50,000	500,000
	FPS–2	50,000	250,000

Cove Point explains that the construction and operation for the additional point of delivery has been requested by WGL for firm transportation and peaking service for residential and commercial use. Cove Point says that WGL has not requested an increase in the peak day entitlements in conjunction with this request to establish a new point of delivery. Therefore, Cove Point asserts there is no impact on its existing peak day obligations to its other customers as a result of the proposed new point of delivery. Cove Point relates that WGL has agreed to reimburse Cove Point 100% of the actual cost of construction to construct and operate this new point of delivery which is approximately $75,000 which includes an amount for gross-up for income tax purposes.

Cove Point says it will comply with all of the environmental requirements of Section 157.206(d) of the Commission's regulations prior to the construction of any facilities. Cove Point states that it has obtained the appropriate environmental clearances from the Maryland State Historic Preservation Office and the United States Department of the Interior, Fish and Wildlife Service, for the proposed construction.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–23665 Filed 9–5–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–300–000, et al.]

Dauphin Island Gathering Partners; Notice of Site Visit

September 2, 1997.

On September 9, 1997, the Office of Pipeline Regulation (OPR) staff will inspect pipeline construction in progress at locations offshore of Dauphin Island, Alabama.

All interested parties may attend. OPR staff will depart from the Mobile Airport by helicopter at 8:30 A.M. Those planning to attend the September 9, 1997 site inspection must provide their own transportation.

For further information, call Paul McKee, Office of External Affairs, at (202) 208–1088.

Lois D. Cashell,

Secretary.

[FR Doc. 97–23666 Filed 9–5–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–711–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

September 2, 1997.

Take notice that on August 25, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismark, North Dakota 58501, filed a request with the Commission in Docket No. CP97–711–000, pursuant to Sections 157.205, 157.211 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to upgrade an existing delivery meter and associated appurtenant facilities by abandoning certain existing facilities and constructing and operating upgraded facilities to effectuate increased natural gas transportation deliveries to Interenergy Corporation (Interenergy) authorized in blanket certificate issued in Docket Nos. CP82–487–000, *et al.*, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williston states that Interagency has requested the upgrade of the existing Hiland Plant delivery meter and associated appurtenant facilities in Washakie County, Wyoming, to allow Williston Basin to accommodate increased deliveries of natural gas to be used as an emergency source of fuel for its gas compressors. The existing metering and appurtenant facilities are currently too small to accommodate the increased delivery requested by Interenergy. Therefore, Williston Basin proposes to replace the existing delivery

meter and associated appurtenant facilities with a larger meter and associated appurtenant facilities to accommodate the increase in delivery requested by Interenergy. The total cost of the abandonment and upgrade proposed herein is approximately $8,000. The total cost would be reimbursed by Interenergy.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 97–23667 Filed 9–5–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DR97–4–000, et al.]

Consumers Energy Company, et al.; Electric Rate and Corporate Regulation Filings

August 29, 1997.

Take notice that the following filings have been made with the Commission:

1. Consumers Energy Company

[Docket No. DR97–4–000]

Take notice that on August 22, 1997, Consumers Energy Company made a depreciation rate amnesty filing as provided for in the Commission's May 15, 1997, Order in MidAmerican Energy Co., Docket No. EL95–3–000. The filing relates to a change in electric depreciation rates implemented pursuant to November 14, 1996 and April 10, 1997 orders of the Michigan Public Service Commission.

Comment date: September 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Heartland Energy Services, Inc.

[Docket No. EC97–50–000]

Take notice that on August 19, 1997, Heartland Energy Services, Inc. (HES), filed an application under Section 203 of the Federal Power Act to transfer its jurisdictional agreements to Cargill-IEC, L.L.C. (Cargill-IEC), a joint venture between WPL Holdings Commodities Trading, L.L.C. (WHCT), a member of which is HES, and Cargill, Incorporated (Cargill).

Comment date: September 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. The Detroit Edison Company

[Docket No. ER97–4096–000]

Take notice that on August 5, 1997, The Detroit Edison Company (Detroit Edison), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service between Detroit Edison Transmission Operations and American Electric Power Service Corp., under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1, dated as of July 16, 1997. Detroit Edison requests that the Service Agreement be made effective as of July 16, 1997.

Comment date: September 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Bangor Hydro-Electric Company

[Docket No. ER97–4097–000]

Take notice that on August 6, 1997, Bangor Hydro-Electric Company filed an executed service agreement for firm point-to-point transmission service with the Central Maine Power Company.

Comment date: September 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Central Hudson Gas and Electric Corporation

[Docket No. ER97–4098–000]

Take notice that on August 4, 1997, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing pursuant to 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and Delmarva Power & Light Company. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume No. 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER97–890–000. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: September 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Southern California Edison Company

[Docket No. ER97–4099–000]

Take notice that on August 6, 1997, Southern California Edison Company (Edison), tendered for filing executed an umbrella Service Agreement (Service Agreement) with the Arizona Public Service Company, for Short-Term Firm Point-To-Point Transmission Service under Edison's Open Access Transmission Tariff (Tariff).

Edison filed the executed Service Agreement with the Commission in compliance with applicable Commission regulations. Edison also submitted revised Sheet No. 165 (Attachment E) to the Tariff, which is an updated list of all current subscribers. Edison requests waiver of the Commission's notice requirement to permit an effective date of August 7, 1997 for Attachment E, and to allow the Service Agreement to become effective according to its terms.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: September 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Union Electric Company

[Docket No. ER97–4100–000]

Take notice that on August 6, 1997, Union Electric Company (UE), tendered for filing Service Agreements for Firm Point-to-Point Transmission Services between UE and AES Power, Inc., Heartland Energy Services, Inc., and Illinois Power Company. UE asserts that the purpose of the Agreements is to permit UE to provide transmission service to the parties pursuant to UE's Open Access Transmission Tariff filed in Docket No. OA96–50.

Comment date: September 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Union Electric Company

[Docket No. ER97–4101–000]

Take notice that on August 6, 1997, Union Electric Company (UE), the transmission provider, tendered for filing a Service Agreement with UE, the transmission customer, for Firm Point-to-Point Transmission Service. UE asserts that the purpose of the Agreement is for UE when it takes transmission service for itself in accordance with FERC regulations, and pursuant to its Open Access Transmission Tariff filed in Docket No. OA96–50.

Comment date: September 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Union Electric Company

[Docket No. ER97–4102–000]

Take notice that on August 6, 1997, Union Electric Company (UE), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service between Vitol Gas & Electric LLC (VGE) and UE. UE asserts that the purpose of the Agreement is to permit UE to provide transmission service to VGE pursuant to UE's Open Access Transmission Tariff filed in Docket No. OA96–50.

Comment date: September 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Maine Public Service Company

[Docket No. ER97–4103–000]

Take notice that on August 6, 1997, Maine Public Service Company (Maine Public), filed an executed Service Agreement with Montaup Electric Company.

Comment date: September 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Orange and Rockland Utilities, Inc.

[Docket No. ER97–4104–000]

Take notice that on August 6, 1997, Orange and Rockland Utilities, Inc. (Orange and Rockland), filed a Service Agreement between Orange and Rockland and Constellation Power Source, Inc., (Customer). This Service Agreement specifies that Customer has agreed to the rates, terms and conditions of Orange and Rockland Open Access Transmission Tariff filed on July 9, 1996 in Docket No. OA96–210–000.

Orange and Rockland requests waiver of the Commission's sixty-day notice requirements and an effective date of July 28, 1997 for the Service Agreement. Orange and Rockland has served copies of the filing on The New York State Public Service Commission and on the Customers.

Comment date: September 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Illinois Power Company

[Docket No. ER97–4105–000]

Take notice that on August 6, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which PECO Energy Company will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of August 1, 1997.

Comment date: September 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Interstate Power Company

[Docket No. ER97–4106–000]

Take notice that on August 6, 1997, Interstate Power Company (IPW), tendered for filing a Transmission Service Agreement between IPW and Rainbow Energy Marketing Corporation (Rainbow). Under the Transmission Service Agreement, IPW will provide non-firm point-to-point transmission service to Rainbow.

Comment date: September 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, Southwestern Electric Power Co.

[Docket No. ER97–4107–000]

Take notice that on August 6, 1997, Central Power and Light Company (CPL), West Texas Utilities Company (WTU), Public Service Company of Oklahoma (PSO) and Southwestern Electric Power Company (SWEPCO) (collectively, the CSW Operating Companies) submitted for filing service agreements under which the CSW Operating Companies will provide firm point-to-point transmission service to Delhi Energy Services, Inc. (Delhi), Electric Clearinghouse, Inc. (ECI), Entergy Power Marketing Corp. (Entergy), Koch Energy Trading, Inc. (Koch), NorAm Energy Services (NorAm), Southern Energy Trading and Marketing, Inc. (Southern), Tex-La Electric Cooperative of Texas, Inc. (Tex-La) and Vitol Gas & Electric L.L.C. (Vitol) and ancillary services to LG&E Power Marketing, Inc. (LG&E) in accordance with the CSW Operating Companies' open access transmission service tariff.

The CSW Operating Companies state that a copy of this filing has been served on Delhi, ECI, Entergy, Koch, NorAm, Southern, Tex-La, Vitol and LG&E.

Comment date: September 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Turner Energy, L.L.C.

[Docket No. ER97–4108–000]

Take notice that on August 4, 1997, Turner Energy, L.L.C. (TE), tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective October 3, 1997.

TE intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where TE sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. TE is not in the business of generating, transmitting, or distributing electric power.

Comment date: September 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. The Detroit Edison Company

[Docket No. ER97–4110–000]

Take notice that on August 7, 1997, The Detroit Edison Company (Detroit Edison), tendered for filing a Service Agreement for wholesale power sales transactions (the Service Agreement) under Detroit Edison's Wholesale Power Sales Tariff (WPS–2), FERC Electric Tariff No. 3 (the WPS–2 Tariff), between Detroit Edison and AYP Energy, Inc., dated as of June 30, 1997. Detroit Edison requests that the Service Agreement be made effective as of June 30, 1997.

Comment date: September 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Wisconsin Public Service Corporation

[Docket No. ER97–4111–000]

Take notice that on August 7, 1997, Wisconsin Public Service Corporation (WPSC), tendered for filing executed Transmission Service Agreements between WPSC and itself. The Agreements provide for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

Comment date: September 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Carolina Power & Light Company

[Docket No. ER97–4112–000]

Take notice that on August 7, 1997, Carolina Power & Light Company (Carolina), tendered for filing executed Service Agreements between Carolina and the following Eligible Entities: Seminole Electric Cooperative Incorporated; and Jacksonville Electric Authority. Service to each Eligible Entity will be in accordance with the terms and conditions of Carolina's Tariff No. 1 for Sales of Capacity and Energy.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: September 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Carolina Power & Light Company

[Docket No. ER97–4113–000]

Take notice that on August 7, 1997, Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service executed between CP&L and the following Eligible Transmission Customer: Western Resources; and a Service Agreement for Short-Term Firm Point-to-Point Transmission Service with Southern Energy Trading and Marketing, Inc. Service to each Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: September 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Rochester Gas and Electric Corporation

[Docket No. ER97–4114–000]

Take notice that on August 7, 1997, Rochester Gas and Electric Corporation (RG&E), filed a Service Agreement between RG&E and the Constellation Power Source, Inc. (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of the RG&E open access transmission tariff filed on July 9, 1996 in Docket No. OA96–141–000.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of August 1, 1997 for the Constellation Power Source, Inc., Service Agreement. RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: September 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Rochester Gas and Electric Corporation

[Docket No. ER97–4115–000]

Take notice that on August 7, 1997, Rochester Gas and Electric (RG&E), filed a Service Agreement between RG&E and the Equitable Power Services Company (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of the RG&E open access transmission tariff filed on July 9, 1996 in Docket No. OA96–141–000.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of August 1, 1997 for the Equitable Power Services Company Service Agreement. RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: September 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Entergy Services, Inc.

[Docket No. ER97–4118–000]

Take notice that on August 8, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Constellation Power Services, Inc.

Comment date: September 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Entergy Services, Inc.

[Docket No. ER97–4119–000]

Take notice that on August 8, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Southern Energy Trading and Marketing, Inc.

Comment date: September 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Duke Power Company

[Docket No. ER97–4120–000]

Take notice that on August 8, 1997, Duke Power Company (Duke), tendered for filing a Transmission Service Agreement between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and Western Resources, Inc. (Transmission Customer), dated as of July 9, 1997 (TSA). Duke states that the TSA sets out the transmission arrangements under which Duke will provide the Transmission Customer non-firm point-to-point transmission service under Duke's Pro Forma Open Access Transmission Tariff. Duke requests that the Agreement be made effective as of July 9, 1997.

Comment date: September 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Duke Power Company

[Docket No. ER97–4121–000]

Take notice that on August 8, 1997, Duke Power Company (Duke), tendered for filing a Transmission Service Agreement between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and Koch Energy Trading, Inc. (Transmission Customer), dated as of July 9, 1997 (TSA). Duke states that the TSA sets out the transmission arrangements under which Duke will provide the Transmission Customer firm point-to-point transmission service under Duke's Pro Forma Open Access Transmission Tariff. Duke requests that the Agreement be made effective as of July 9, 1997.

Comment date: September 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Florida Power & Light Company

[Docket No. ER97–4122–000]

Take notice that on August 8, 1997, Florida Power & Light Company (FPL), tendered for filing proposed service agreements with The Energy Authority, Inc., for Non-Firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreements be permitted to become effective on August 1, 1997.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: September 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. PECO Energy Company

[Docket No. ER97–4123–000]

Take notice that on August 8, 1997, PECO Energy Company (PECO) filed a Service Agreement dated July 28, 1997 with Valero Power Services Company (VALERO) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds VALERO as a customer under the Tariff.

PECO requests an effective date of July 28, 1997, for the Service Agreement.

PECO states that copies of this filing have been supplied to VALERO and to the Pennsylvania Public Utility Commission.

Comment date: September 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. PacifiCorp

[Docket No. ER97–4124–000]

Take notice that on August 8, 1997, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the

Commission's Rules and Regulations, a notice of Cancellation of Service Agreements under PacifiCorp's FERC Electric Tariff, Fourth Revised Volume No. 3.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: September 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Southern California Edison Company

[Docket No. ER97–4125–000]

Take notice that on August 8, 1997, Southern California Edison Company (Edison), tendered for filing executed an umbrella Service Agreement (Service Agreement) with Pacific Gas & Electric, for Short-Term Firm Point-To-Point Transmission Service under Edison's Open Access Transmission Tariff (Tariff).

Edison filed the executed Service Agreement with the Commission in compliance with applicable Commission regulations. Edison also submitted revised Sheet No. 165 (Attachment E) to the Tariff, which is an updated list of all current subscribers. Edison requests waiver of the Commission's notice requirement to permit an effective date of August 8, 1997, for Attachment E, and to allow the Service Agreement to become effective according to its terms.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: September 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Madison Gas and Electric Company

[Docket No. ER97–4126–000]

Take notice that on August 8, 1997, Madison Gas and Electric Company (MGE), tendered for filing a service agreement with American Electric Power Service Corporation, AYP Energy, Inc., and Northern Indiana Public Service Company under MGE's Power Sales Tariff. MGE requests an effective date of August 11, 1997, which is the date the agreement is filed with the FERC.

Comment date: September 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

31. Virginia Electric and Power Company

[Docket No. ER97–4127–000]

Take notice that on August 8, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing eight Service Agreements for Firm Point-to-Point Transmission Service with The Wholesale Power Group under the Open Access Transmission Tariff to Eligible Purchasers dated July 9, 1996. Under the tendered Service Agreement Virginia Power will provide firm point-to-point service to The Wholesale Power Group as agreed to by the parties under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: September 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

32. PacifiCorp

[Docket No. ER97–4128–000]

Take notice that on August 8, 1997, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, Non-Firm Transmission Service Agreement with Avista Energy, Inc. (Avista), Chelan County Public Utility District #1 (Chelan) and PacifiCorp's Merchant Function and Short-Term Firm Transmission Service Agreements with Avista and Chelan under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 11.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: September 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

33. Cinergy Services, Inc.

[Docket No. ER97–4129–000]

Take notice that on August 8, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Equitable Power Services Company (Equitable).

Cinergy and Equitable are requesting an effective date of July 15, 1997.

Comment date: September 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

34. Cinergy Services, Inc.

[Docket No. ER97–4130–000]

Take notice that on August 8, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and The Energy authority, Inc. (Authority).

Cinergy and Authority are requesting an effective date of August 18, 1997.

Comment date: September 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

35. Cinergy Services, Inc.

[Docket No. ER97–4131–000]

Take notice that on August 8, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Wisconsin Electric Power Company (Wisconsin).

Cinergy and Wisconsin are requesting an effective date of July 7, 1997.

Comment date: September 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

36. Central Hudson Gas & Electric Corporation

[Docket No. ER97–4132–000]

Take notice that on August 8, 1997, Central Hudson Gas & Electric Corporation (CHG&E), tendered for filing pursuant to 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and Public Service Electric and Gas Company. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Open Access Schedule, Original Volume No. 1 (Transmission Tariff) filed in compliance with the Commission's Order No. 888 in Docket No. RM95–8–000 and RM94–7–001 and amended in compliance with Commission Order dated May 28, 1997. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: September 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

37. Citizens Utilities Company

[Docket No. ES95–36–003]

Take notice that on August 25, 1997, Citizens Utilities Company (Citizens

Utilities) filed an amendment to its application with the Commission seeking an extension to December 31, 1997, of the period during which Citizens Utilities may issue not more than $189.5 million of securities in support of or to guarantee securities issued by governmental or quasi-governmental bodies for the benefit of Citizens Utilities.

Comment date: September 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–23719 Filed 9–5–97; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5887–5]

Notice of Final Decision To Grant Pharmacia and Upjohn a Modification of an Exemption From the Land Disposal Restrictions of the Hazardous and Solid Waste Amendments of 1984 Regarding Injection of Hazardous Wastes

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on a request to modify an exemption from the hazardous and solid waste amendments of the Resource Conservation and Recovery Act.

SUMMARY: Notice is hereby given by the United States Environmental Protection Agency (USEPA or Agency) that modification of an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act (RCRA) has been granted to Pharmacia and Upjohn of Kalamazoo, Michigan. This modification allows Pharmacia and Upjohn to inject four (4) RCRA-regulated hazardous wastes which will be banned from land disposal on April 8, 1998, as a result of regulations promulgated on April 8, 1996, into two Class I injection wells at the Kalamazoo, Michigan, facility. The modification also increases the combined maximum injection volume for the two wells to 30 million gallons per year, as well as changing the name to Pharmacia and Upjohn. As required by 40 CFR part 148, Pharmacia and Upjohn has demonstrated, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the injection zone utilized by Pharmacia and Upjohn's waste disposal facility located near Kalamazoo, Michigan, for as long as the newly exempted waste remains hazardous. This decision constitutes a final Agency action for which there is no administrative appeal.

SUPPLEMENTARY INFORMATION: Pharmacia and Upjohn submitted a petition for an exemption from the restrictions on land disposal of hazardous wastes on February 22, 1988. Revised documents were received on September 21, 1988, and May 24, 1989 and several supplemental submittals were subsequently made. The exemption was granted on February 27, 1990.

On April 29, 1996, in their permit reapplications for Well #3 and #4 and in response to the Land Disposal Restrictions Rule published in the **Federal Register** at 61 FR 15566 et seq. on April 8, 1996, which set ban dates for a number of hazardous waste codes, Pharmacia and Upjohn submitted a request to add a total of four (4) additional RCRA waste codes to its exemption. These codes (D022, D028, D035, and D038) are banned by the April 8, 1996, rule. The newly-promulgated rule bans codes D022, D028, D035, and D038 from deep injection after April 8, 1998, unless Pharmacia and Upjohn makes a no-migration demonstration. Pharmacia and Upjohn made a no-migration demonstration in 1990. After careful review of the material submitted, the USEPA has determined, as required by 40 CFR part 148.20(f), that there is a reasonable degree of certainty that waste streams containing constituents designated by these codes will behave hydraulically and chemically like wastes for which Pharmacia and Upjohn was granted its original exemption and will not migrate from the injection zone within 10,000 years. The injection zone is the Munising Formation. The confining zone is comprised of the Trempealeau Dolomite.

The petition exemption is also modified to change the name of the company to Pharmacia and Upjohn, to reflect the change in corporate ownership. All requirements and responsibilites remain in effect under this exemption approval.

Conditions: General conditions of this exemption are found at 40 CFR part 148. The exemption granted to Pharmacia and Upjohn on February 27, 1990, included a number of specific conditions. Conditions numbered (2) and (3) remain in force. Condition (1) is modified to increase the combined maximum injection volume into both Wells #3 and #4 to 30 million gallons a year. This increase in waste injectate volume requires that the model be reviewed in 2014 rather than 2018, to meet the modelled total lifetime injection volume.

Changes: The company name for the exemption approval is now Pharmacia and Upjohn. The waste codes approved under this exemption approval are: F001, F002, F003, F005, D001, D007, D022, D028, D035, and D038. The conditions of the exemption approval are:

(1) The combined annual injection volume for Well Numbers 3 and 4 must not exceed 30 million gallons

(2) The injection zone shall be limited to the Munising Formation; and

(3) Injection shall only occur into the Mt. Simon Member and into that portion of the Eau Claire Member which is below 4750 feet.

DATES: This action is effective as of September 8, 1997.

FOR FURTHER INFORMATION CONTACT: David Werbach, Lead Petition Reviewer, USEPA, Region 5, telephone (312) 886–4242. Copies of the petition and all pertinent information relating thereto are on file and are part of the Administrative Record. It is recommended that you contact the lead reviewer prior to reviewing the Administrative Record.

Rebecca L. Harvey,

Acting Director, Water Division.

[FR Doc. 97–23694 Filed 9–5–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00223; FRL–5742–8]

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: A meeting of the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL Commitee) will be held on September 23–25, 1997, in Washington, DC. At this meeting, the committee will address, as time permits, the various aspects of the acute toxicity and the development of Acute Exposure Guideline Levels (AEGLs) for the following chemicals: hydrogen fluoride; carbon tetrachloride; dichlorodimethylsilane; phosgene; methyl chloroformate; isopropyl chloroformate; propyl chloroformate; acrylyl chloride; propylene oxide boron trichloride; and allyl alcohol. In addition, the committee will discuss literature search results and other available data for sulfur dioxide, sulfur trioxide, and sulfuric acid in preparation for the development of AEGLs for these chemicals.

DATES: A meeting of the NAC/AEGL Committee will be held from 10 a.m. to 5 p.m. on Tuesday, September 23; from 8:30 a.m. to 5 p.m. on September 24; and from 8 a.m. to 12:30 p.m. on September 25, 1997.

ADDRESSES: The meeting will be held in the Interstate Commerce Commission Building, Hearing Room A, 1201 Constitution NW., Washington DC. (entrance on Constitution Ave at the corner of Constitution Ave and 12th St., NW., 1 block from the Federal Triangle Metro stop).

FOR FURTHER INFORMATION CONTACT: Paul S. Tobin, Designated Federal Officer (DFO) Office of Prevention, Pesticides, and Toxic Substances (7406), 401 M St. SW., Washington, DC. 20460, (202) 260–1736, e-mail: tobin.paul@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The meeting of the NAC/AEGL Commitee will be open to the public. Oral presentations or statements by interested parties will be limited to 10 minutes. Interested parties are encouraged to contact Paul Tobin, to schedule presentations before the committee. Since seating for outside observers may be limited, those wishing to attend the meeting as observers also are encouraged to contact Paul Tobin, at the earliest possible date to insure adequate seating arrangements. Inquiries regarding oral presentations and the submission of written statements or chemical specific information should be directed to the DFO. Another meeting of the NAC/AEGL is expected to be held in Washington, DC in December, 1997 (currently planned for December 8–10, 1997). It is anticipated that chemicals to be addressed at this meeting will include, but not necessarily be limited to the following: hydrogen cyanide; sulfur dioxide; sulfur trioxide; sulfuric acid; peracetic acid; piperidine; arsenous trichloride; and bromine. Inquiries regarding the submission of data, written statements or chemical-specific information on these chemicals should be directed to the DFO at the earliest date possible to allow for consideration of this information in the preparation of committee materials.

Dated: August 29, 1997.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 97–23689 Filed 9–5–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5889–4]

Science Advisory Board Notification of Public Advisory Committee Meeting: September 1997

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Integrated Risk Project (IRP) Steering Committee, an *ad hoc* committee established by the Executive Committee of the Science Advisory Board, will meet on September 24–26, 1997 at the Quality Hotel, 1200 North Courthouse Road, Arlington, VA, telephone (703) 524–4000. The meeting will begin at 8:30 a.m. on September 24, and end no later than 5:30 p.m. each day. Seating will be limited and available on a first-come, first-served basis. The purpose of the meeting is to review and revise the second draft of a report being developed as part of the Integrated Risk Project, describing an integrated model for decision-making that incorporates information on risks to ecosystems and humans, risk reduction options, and their economic and societal implications.

Background on the Integrated Risk Project (IRP)

In a letter dated October 25, 1995, to Dr. Matanoski, Chair of the SAB Executive Committee, Deputy Administrator Fred Hansen charged the SAB to: a) develop an updated ranking of the relative risk of different environmental problems based upon explicit scientific criteria; b) provide an assessment of techniques and criteria that could be used to discriminate among emerging environmental risks and identify those that merit serious, near-term Agency attention; c) assess the potential for risk reduction and propose alternative technical risk reduction strategies for the environmental problems identified; and d) identify the uncertainties and data quality issues associated with the relative rankings. The project is being conducted by several SAB panels, working at the direction of an *ad hoc* Steering Committee established by the Executive Committee.

Single copies of Reducing Risk, the report of the previous relative risk ranking effort of the SAB, can be obtained by contacting the SAB's Committee Evaluation and Support Staff (1400), 401 M Street, SW, Washington, DC 20460, telephone (202) 260-8414, or fax (202) 260–1889. Members of the public desiring additional information about the meeting, including an agenda, should contact Ms. Wanda Fields, Staff Secretary, Committee Operations Staff, Science Advisory Board (1400), US EPA, 401 M Street, SW, Washington DC 20460, by telephone at (202) 260–8414, fax at (202) 260–7118, or via the Internet at: Fields.Wanda@epamail.epa.gov.

Anyone wishing to make a brief oral presentation at the IRP meeting must contact Mr. Thomas O. Miller, Designated Federal Official, no later than 4:00 pm on September 16, 1997, at fax: (202) 260–7118 or via the Internet at miller.tom@epamail.epa.gov. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 35 copies of any written comments to the Committee are to be given to Mr. Miller no later than the time of the presentation for distribution to the Committee and the interested public. For further information, you may also reach Mr. Miller by phone on (202) 260–5886. See below for additional information on providing comments to the SAB.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its

meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. For conference call meetings, opportunities for oral comment will be limited to no more than five minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date, may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Dated: August 28, 1997.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 97–23690 Filed 9–5–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 97–1883]

North American Numbering Council; Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On August 29, 1997, the Commission released a public notice announcing the next meeting of the North American Numbering Council and the Agenda for that meeting. The intended effect of this action is to make the public aware of the NANC's next meeting and its Agenda.

FOR FURTHER INFORMATION CONTACT: Jeannie Grimes, Paralegal Specialist, assisting the NANC at (202) 418–2313, or via the Internet at jgrimes@fcc.gov. The mailing address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, 2000 M Street, NW, Suite 235, Washington, DC 20054. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: August 29, 1997. The next meeting of the North American Numbering Council (NANC) will be held on Tuesday, September 23, 1997, from 8:30 am until 4:30 pm, EST at the Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW, Washington, DC 20036.

SUPPLEMENTARY INFORMATION: This meeting will be open to members of the general public. The FCC will attempt to accommodate as many people as possible. Admittance, however will be limited to the seating available. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Jeannie Grimes at the address under **FOR FURTHER INFORMATION CONTACT,** stated above.

Agenda: The planned agenda for the September 23, 1997, meeting is as follows:

1. Local Number Portability Administration Working Group Report. Action plan for NANC items enumerated In the Matter of Telephone Number Portability, Second Report and Order, CC Docket 95–116, FCC 97–289 (rel. August 18, 1997).
2. Number Pooling Management Group (NPMG) Report.
3. Industry Numbering Committee (INC) Report on Number Pooling.
4. North American Numbering Plan Administrator (NANPA) Working Group Status Report.
5. Discussion of Central Office Code (NXX) Assignment Guidelines Policy Issue: Elimination of Protected Codes.
6. Other Business.
7. Review of Decisions Reached and Action Items.

Federal Communications Commission.

Kent Nilsson,

Deputy Chief, Network Service Division, Common Carrier Bureau.

[FR Doc. 97–23697 Filed 9–5–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2222]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

September 2, 1997.

Petition for reconsideration have been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to this petition must be filed September 23, 1997. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service. (MM Docket No. 87–268).

Number of Petitions Filed: 62.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–23664 Filed 9–5–97; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting, Board of Visitors for the Emergency Management Institute

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, FEMA announces the following committee meeting:

Name: Board of Visitors for the Emergency Management Institute.

Dates of Meeting: September 25–26, 1997.

Place: Federal Emergency Management Agency, National Emergency Training Center, Emergency Management Institute, Conference Room, Building N, Room 408, Emmitsburg, Maryland 21727 and Mt. Weather Emergency Assistance Center (MWEAC), Building 430, Berryville, Virginia.

Time: Thursday, September 25, 1997 8:30 a.m.–5:00 p.m. (NETC); Friday, September 26, 1997, 8:30 a.m.–10:30 a.m. (NETC); Friday, September 26, 1997, 11:30 a.m.–3:00 p.m. (MWEAC).

Proposed Agenda: Status reports on training in response and recovery, planning, mitigation, and simulation and exercises; informal working sessions regarding EMI activities; and preparing information for the BOV 1997 Annual Report.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public with approximately 10 seats available on a first-come, first-serve basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, Emergency

Management Institute, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1286.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the Superintendent, Emergency Management Institute, Federal Emergency Management Agency, Building N, National Emergency Training Center, Emmitsburg, MD 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: August 27, 1997.

Kay C. Goss,

Associate Director, Preparedness, Training, and Exercises Directorate.

[FR Doc. 97–23721 Filed 9–5–97: 8:45 am]

BILLING CODE 6718–01–P–M

FEDERAL MARITIME COMMISSION

[Docket No. 97–15]

Notice of Filing of Compliant and Assignment

Orient Overseas Container Line (USA), Inc. and Orient Overseas Container Line v. *Dollar American Exchange, Inc. Trading as Filex, Inc.*

Notice is given that a complaint filed by Orient Overseas Container Line (USA), Inc. and Orient Overseas Container Line (''Complainants'') against Dollar American Exchange, Inc. trading as Filex, Inc. (''Respondents'') was served September 2, 1997. Complainants allege that Respondents have violated section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. app. § 1709(a)(1), (b)(5), by failing to make payment on several shipments after making repeated promises to pay and asking Complainants to continue to accept shipments even though Respondents were in serious financial peril and it was unlikely that payment would ever be made, and abandoning containers in Manila, accruing unpaid demurrage.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the residing officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by September 2, 1998, and the final decision of the Commission shall be issued by December 31, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 97–23663 Filed 9–5–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

American Cargo Express, Inc., 435 Division Street, Elizabeth, NJ 07201. Officers: Christina Trizano, President, Richard Trizano, Vice President

Kenneth Brown C.H.B., 632 Chester Pike, Ridley Park, PA 19078, Sole Proprietor

International Shipping Management USA, Inc., 1630 Bath Avenue, Brooklyn, NY 11214. Officer: Gary Solovey, President

Dated: September 2, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–23662 Filed 9–5–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 2, 1997.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Iron Bancshares, Inc., Salisbury, Connecticut; to become a bank holding company by acquiring 100 percent of the voting shares of The National Iron Bank, Salisbury, Connecticut.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. FBOP Corporation, Oak Park, Illinois; to acquire 9.9 percent of the voting shares of First Capital Bank of Arizona, Phoenix, Arizona.

2. Marengo Bancshares, Inc., Marengo, Illinois (in formation); to become a bank holding company by acquiring 100 percent of the voting shares of Prairie State Bank, Marengo, Illinois (in organization).

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Exchange National Bancshares, Inc., Jefferson City, Missouri; to acquire 100 percent of the voting shares of Union State Bancshares, Inc., Clinton, Missouri, and thereby indirectly acquire Union State Bank & Trust Company of Clinton, Clinton, Missouri.

Board of Governors of the Federal Reserve System, September 2, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–23661 Filed 9–5–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 3, 1997.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. National City Bancshares, Inc., Evansville, Indiana; to merge with Fourth First Bancorp, Inc., Huntingburg, Indiana, and thereby indirectly acquire First Bank of Huntingburg, Huntingburg, Indiana.

Board of Governors of the Federal Reserve System, September 3, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–23726 Filed 9–5–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 961–0106]

Insilco Corporation; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodies in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before November 7, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Casey R. Triggs, Federal Trade Commission, S–2308, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580. (202) 326–2682. Nicholas R. Koberstein, Federal Trade Commission, S–2308, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580. (202) 326–2743.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for August 27, 1997), on the World Wide Web, at ''http://www.ftc.gov/actions/htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (the ''Commission'') has accepted for public comment an agreement containing a proposed Consent Order from Insilco Corporation (''Insilco''). The proposed Consent Order contains a number of provisions designed to remedy the anticompetitive effects that have resulted, and that are likely to continue to occur, because of Insilco's acquisition of the assets of Helima-Helvetion, Inc. (''Helima'') from Helima's German parent company, Helmut Lingemann & Co. GmbH (''Lingemann'').

The Transaction

Pursuant to a purchase agreement dated July 10, 1996, Insilco acquired from Lingemann the assets of Helima, a New York corporation with its only plant in Duncan, South Carolina, and the stock of ARUP Alu-Rohr und Profil GmbH, Lingemann's German subsidiary engaged in the production and supply of welded-seam aluminum tubes.

The Complaint

The proposed complaint alleges that the consummated acquisition of Helima violates Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, in two relevant markets: (1) the market for welded-seam aluminum tubes with diameters of 50 millimeters or greater; and (2) the market for welded-seam aluminum tubes with diameters less than 50 millimeters. Welded-seam aluminum tubes with diameters of 50 millimeters of greater are generally used in charged air coolers (''CAC'') installed on heavy-weight trucks,[1] whereas welded-seam aluminum tubes with diameters less than 50 millimeters are generally used in radiators. In both CAC and radiators, the welded-seam aluminum tubes act as the heat exchange component, which is a device that transfers heat from one fluid or gas to another medium, generally air.

The complaint alleges that Insilco's acquisition of Helima gave it a virtual monopoly or near-monopoly in these two types of welded-seam aluminum tubes. This acquisition thereby increased the likelihood that consumers would be forced to pay higher prices for welded-seam aluminum CAC and radiator tubes.

A. The Welded-Seam Aluminum CAC Tube Market

In the market for welded-seam aluminum CAC tubes, Insilco's post-acquisition market share is 100%. Currently, there is no foreign supplier of

[1] Heavy-weight truck is the designation given to a truck over 19,000 lbs. The Department of Transportation categorizes such trucks as either Class 6, 7, or 8 vehicles.

welded-seam aluminum CAC tubes shipping product into North America, and it is unlikely that there will be such a supplier in the next two years, or at any time in the foreseeable future. Because the cost of entering and producing welded-seam aluminum CAC tubes is relatively high compared to the limited potential sales revenues available to an entrant, entry into this market is not likely to be profitable, and is therefore not likely to occur in a timely manner to counteract the additional anticompetitive effects likely to result from the Helima acquisition. Indeed, there has been no entry into the market for welded-seam aluminum CAC tubes since the acquisition of Helima nearly a year ago, nor has the threat of entry deterred any of the actual anticompetitive effects resulting from the acquisition.

B. The Welded-Seam Aluminum Radiator Tube Market

In the merchant market for welded-seam aluminum radiator tubes, Insilco's post-acquisition market share increased to about 90%. Although there is one foreign supplier of welded-seam aluminum radiator tubes shipping product into North America, that supplier has limited sales. It is highly unlikely that this supplier's market share will significantly expand within the next two years because of import duties, shipping costs and time, and customer concerns about the accessibility of the supplier.

Entry sufficient to avert the anticompetitive effects of this acquisition is unlikely. Indeed, there has been no entry into the market for welded-seam aluminum radiator tubes since the time of the Helima acquisition, and the threat of entry has not deterred anticompetitive effects resulting from the Helima acquisition.

C. The Pre-Consummation Transfer of Competitively-Sensitive Information

The proposed complaint also alleges that Lingemann, at Insilco's request, gave Insilco comprehensive competitively-sensitive information before consummation of the acquisitions. In particular, Helima gave Insilco customer-specific price information, current and future pricing plans, competition strategies, price formulas, and price strategies. This information transfer was particularly harmful because Insilco and Helima competed against each other in two highly concentrated markets (duopolies) and the information concerned products that are relatively fungible. This transfer had the potential to harm competition in the interim pre-consummation period and in the event the acquisitions were delayed, modified, or abandoned, may have led to even greater and more long-lasting harm. The complaint thus alleges that the transfer of such competitively-sensitive information in such highly concentrated markets violates Section 5.

The Consent Order

The proposed Consent Order requires Insilco to divest two welded-seam aluminum tube mills (out of the assets acquired from Lingemann) within four months of the date on which the proposed Consent Order becomes final. The proposed Consent Order also prohibits Insilco from engaging in the pre-consummation transfer of competitively-sensitive information.

A. Divestiture Provisions

Under the proposed Consent Order, Insilco is required to divest two welded-seam aluminum tube mills from the former Helima Duncan, South Carolina facility. One of the mills to be divested must be capable of producing welded-seam aluminum CAC tubes, and one must be capable of producing radiator tubes. In addition, the package of assets to be divested includes one set of tooling that is capable of being used on both mills, as well as additional ancillary assets such as machinery, fixtures, equipment, and software used in the maintenance and operation of the assets to be divested. Further, Insilco must provide the acquirer access to Insilco employees with knowledge of the Helima mills for the purposes of training, and must sell to the acquirer sole-source spare and replacement parts. Pursuant to a customer's request, Insilco would be required to divest to the acquirer the tooling used to make that customer's tubes. If Insilco fails to divest the package of assets within four months after the date on which the proposed Consent Order becomes final, the Commission may appoint a trustee to divest all five of the mills located at the former Helima plant in Duncan, South Carolina.

To help ensure that the acquirer has access to customers, the proposed Consent Order includes a provision prohibiting Insilco's enforcement of any supply contracts that were entered into after the acquisition and that are operative for a period grater than one year. Further, the proposed Consent Order requires Commission approval of the acquirer, and requires a potential acquirer to submit a five year business plan showing how it will use the divested assets, how it will compete in the markets, and that the divested assets will remain and be competitive in North America. The purpose of the divestiture is to ensure the reinstitution of a viable, ongoing competitor to Insilco in the markets for welded-seam aluminum CAC tubes and welded-seam aluminum radiator tubes.

The proposed Consent Order also requires Insilco to provide the Commission a report of compliance with the divestiture provisions of the Consent Order within 30 days following the date the proposed Consent Order becomes final, and every 30 days thereafter until Insilco has completed the required divestiture.

Finally, Insilco will be required to provide prior notification to the Commission for certain acquisitions involving tube mills or tube producers.

B. Bar on Information Transfer

The proposed Consent Order prohibits Insilco from obtaining, or providing, prior to the consummation of an acquisition or sale of an interest in any of its businesses, customer-specific price and cost information, current or future pricing plans, current or future strategies or policies relating to competition, and analyses or formulas used to determine costs or prices. The proposed Consent Order thus prohibits the exchange of specific types of information that would likely harm competition in any market. The proposed Consent Order does, however, acknowledge that a situation might arise wherein Insilco, or a future acquisition partner, may benefit from having access to competitively-sensitive information in order to assess a proposed acquisition. In such a case, the party possessing such information would be allowed under the proposed Consent Order to transfer the information to an independent agent who will mask the customer-specific and/or competitor-specific nature of the information before providing it to its acquisition partner. Transferring this type of information through an independent agent permits the benefits of the information transfer while avoiding the potential for injury to competition.

Public Comment

The proposed Consent Order has been placed on the record for 60 days for reception of comments by interested persons. Comments received during this period will become part of the public record. After 60 days, the Commission will again review the agreement and the comments received, and will decide whether to withdraw from the agreement or make final the agreement's proposed Order.

The purpose of this analysis is to facilitate the public comment on the proposed Consent Order, and it is not

intended to constitute an official interpretation of the agreement and proposed Consent Order or to modify in any way its terms.

Donald S. Clark,

Secretary.

[FR Doc. 97–23680 Filed 9–5–97; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Notice.

SUMMARY: This notice announces the Agency for Health Care Policy and Research's (AHCPR) intention to request the Office of Management and Budget (OMB) to allow a proposed information collection of the ''Medical Expenditure Panel Survey Household Component (MEPS HC)—Panels 3 and 4.'' In accordance with the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)), AHCPR invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by November 7, 1997.

ADDRESSES: Written comments should be submitted to: Ruth A. Celtnieks, Reports Clearance Officer, AHCPR, 2101 East Jefferson Street, Suite 500, Rockville, MD 20852–4908.

All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Ruth A. Celtnieks, AHCPR Reports Clearance Officer, (301) 594–1406, ext. 1497.

SUPPLEMENTARY INFORMATION:

Proposed Project

''Medical Expenditure Panel Survey Household Component (MEPS–HC)—Panels 3 and 4.''

The AHCPR intends to conduct an annual panel survey of U.S. households to collect information on a variety of measures related to health status, health insurance coverage, health care use and expenditures, and sources of payment for health services. Each panel consists of a nationally representative sample of U.S. households who remain in MEPS for two consecutive years of data collection. The first two panels of MEPS began in 1996 and 1997. Panels 3 and 4 of the MEPS–HC begin in 1998 and 1999, respectively. The MEPS–HC is jointly sponsored by the AHCPR and the National Center for Health Statistics (NCHS). It will be conducted using a sample of households selected from households which responded to the National Health Interview Survey (NHIS) sponsored by NCHS. The NHIS is a household survey which collects health related data from approximately 50,000 households and 110,000 people. Due to the Department of Health and Human Services (HHS) efforts to integrate survey data collection activities, the NHIS is used as the sampling frame for the MEPS and several other surveys.

Data to be collected from each household include detailed information on demographics, health conditions, current health status, utilization of health care providers, charges and payments for health care services, medications, employment and health insurance. Subject to AHCPR and NCHS confidentiality statutes, data will be made available through publications, articles in major journals as well as public use data files. The data are intended to be used for purposes such as:

- Generating national estimates of individual and family health care use and expenditures, private and public health insurance coverage, and the availability, costs and scope of private health insurance benefits among Americans;
- Examining the effects of changes in how chronic care and disability are managed and financed;
- Evaluating the growing impact of managed care and of enrollment in different types of managed care plans; and
- Examining access to and costs of health care for common diseases and conditions, prescription drug use, and other health issues.

Statisticians and researchers will use these data to make important generalizations on the civilian non-institutionalized population of the United States, as well as to conduct research in which the family is the unit of analysis.

Method of Collection

The data will be collected using a combination of modes. For example, the AHCPR intends to introduce study participants to the survey through advance mailings. The first contact will provide the household with information regarding the importance and uses of the information obtained. The AHCPR will then conduct five (in-person) interviews with each household to obtain health care use and expense data. Lastly, the AHCPR will conduct one telephone interview with each household to obtain tax and asset information. Data will be collected using a computer-assisted personal interviewing method (CAPI). In certain cases, AHCPR will conduct interviews over the telephone, if necessary. Burden estimates follow:

Initial Number of Respondents: 10,000.

Panel 3: 4800.

Panel 4: 5200.

Number of Surveys Per Respondent: 6.

Average Burden Per Respondent: 9.0 hours.

Estimated Burden Total: 81,100 hours.

Panel 3: 39,050 hours.

Panel 4: 42,050 hours.

Request for Comments

Comments are invited on: (a) the necessity of the proposed collection; (b) the accuracy of the Agency's estimate of burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Copies of these proposed collection plans and instruments can be obtained from the AHCPR Reports Clearance Officer (see above).

Dated: September 2, 1997.

John M. Eisenberg,

Administrator.

[FR Doc. 97–23681 Filed 9–5–97; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on September 25, 1997, 8 a.m. to 4 p.m.

Location: Holiday Inn, Versailles Ballrooms III and IV, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Sharon K. Lappalainen, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1243, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12514. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will provide advice and recommendations to the agency regarding over-the-counter drugs of abuse testing systems and comment on a draft points-to-consider document for these products. Single copies of the draft points-to-consider document entitled ''Points to Consider for Approval of Home Drugs of Abuse Test Kits'' are available to the public by contacting the Division of Small Manufacturers Assistance, 1350 Piccard Dr., Rockville, MD 20851, 1–800–638–2041, or on the Internet using the World Wide Web (WWW) (http://www.fda.gov/cdrh/draftgui.html).

Procedure: On September 25, 1997, from 9 a.m. to 4 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 18, 1997. Oral presentations from the public will be scheduled between approximately 9 a.m. and 10 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 18, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed committee deliberations: On September 25, 1997, from 8 a.m. to 9 a.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)) relating to present and future agency issues.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 28, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–23729 Filed 9–5–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: National Mammography Quality Assurance Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on October 28, 1997, 9 a.m. to 5 p.m., and October 29, 1997, 8 a.m. to 5 p.m.

Location: Sheraton Premiere Hotel at Tysons Corner, conference room 6, 8661 Leesburg Pike, Vienna, VA.

Contact Person: Charles A. Finder, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3332, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12397. Please call the Information Line for up-to-date information on this meeting.

Agenda: On October 28 and 29, 1997, the committee will discuss regulation of interventional mammography under the Mammography Quality Standards Act of 1992.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 26, 1997. Oral presentations from the public will be scheduled between approximately 9:30 a.m. and 10:30 a.m. on October 28, 1997. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 26, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 3, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–23728 Filed 9–5–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90N–0349]

Draft ''Guidance for Industry: Efficacy Evaluation of Hemoglobin- and Perfluorocarbon-Based Oxygen Carriers;'' Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document entitled ''Efficacy Evaluation of Hemoglobin- and Perfluorocarbon-Based Oxygen Carriers.'' The document is intended as general guidance for manufacturers, investigators, sponsors, and other parties interested in the design, endpoints, and efficacy criteria for clinical trials of hemoglobin- and perfluorocarbon-based oxygen carrier products.

DATE: Written comments may be submitted at any time, however, comments should be submitted by December 8, 1997, to ensure their adequate consideration in preparation of the final document.

ADDRESSES: Submit written requests for single copies of ''Efficacy Evaluation of Hemoglobin- and Perfluorocarbon-Based Oxygen Carriers'' to (1) the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, or (2) the Drug Information Branch, Division of Communications Management (HFD–210), Center for Drug Evaluation and Research, FDA, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–

1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. Submit written comments on the guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Astrid L. Szeto, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION:

I. Background

The draft document is intended to serve as an adjunct to FDA's ''Points to Consider (PTC) in Safety Evaluation of Hemoglobin-Based Oxygen Carriers,'' which is dated August 27, 1990. That PTC was announced as available in the **Federal Register** of January 8, 1991 (56 FR 698), and was published in the April 1991 issue of *Transfusion* (31: 369–371, 1991). This draft document was developed, in part, from presentations and discussions at the ''Workshop on Criteria for Efficacy of Red Cell Substitutes,'' held in Bethesda, MD, on January 11, 1994, and sponsored by the National Heart, Lung, and Blood Institute, the Department of the Army, and FDA. The draft document is intended as general guidance for manufacturers, investigators, sponsors, and other parties interested in the design, endpoints, and efficacy criteria for clinical trials of hemoglobin- and perfluorocarbon-based oxygen carrier products.

This guidance document represents the agency's current thinking on hemoglobin- and perfluorocarbon-based oxygen carriers. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both. As with other guidance documents, FDA does not intend this document to be all-inclusive and cautions that not all information may be applicable to all situations. This document is intended to provide information and does not set forth requirements. FDA encourages manufacturers, sponsors, investigators, and other interested parties to prospectively discuss with FDA the design of clinical trials, selection of clinical trial endpoints, and development of efficacy criteria to prevent expenditure of time, personnel, money, and other resources on clinical trials that FDA may later determine are unacceptable.

II. Comments

This draft document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft guidance document. Written comments may be submitted at any time, however, comments should be submitted by December 8, 1997,, to ensure adequate consideration in preparation of the final document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments and requests for copies should be identified with the docket number found in brackets in the heading of this document. A copy of this document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document using the World Wide Web (WWW). For WWW access connect to CBER at ''http://www.fda.gov/cber/guidelines.htm''.

Dated: August 29, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–23655 Filed 9–5–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

This Notice is now available on the internet at the following website: http://www.health.org

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, Room 13A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratory, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840 (formerly: Bayshore Clinical Laboratory)

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/334–263–5745

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 22021, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787/800–242–2787

Baptist Medical Center—Toxicology Laboratory 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5784

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

CompuChem Laboratories, Inc., 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093 (formerly: Cox Medical Centers)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, P.O. Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045/847–688–4171

Diagnostic Services Inc., dba DSI, 4048 Evans Ave., Suite 301, Fort Myers, FL 33901, 941–418–1700/800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800–898–0180/206–386–2672 (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800–725–3784/915–563–3300 (formerly: Harrison & Associates Forensic Laboratories)

Jewish Hospital of Cincinnati, Inc., 3200 Burnet Ave., Cincinnati, OH 45229, 513–569–2051

LabOne, Inc., 8915 Lenexa Dr., Overland Park, Kansas 66214, 913–888–3927/800–728–4064 (formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America, 888 Willow St., Reno, NV 89502, 702–334–3400 (formerly: Sierra Nevada Laboratories, Inc.)

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 800–437–4986/908–526–2400 (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734

MedExpress/National Laboratory Center, 4022 Willow Lake Blvd., Memphis, TN 38118, 901–795–1515/800–526–6339

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43614, 419–381–5213

Medlab Clinical Testing, Inc., 212 Cherry Lane, New Castle, DE 19720, 302–655–5227

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800–832–3244/612–636–7466

Methodist Hospital Toxicology Services of Clarian Health Partners, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587

Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Ave., Peoria, IL 61636, 800–752–1835/309–671–5199

MetroLab-Legacy Laboratory Services, 235 N. Graham St., Portland, OR 97227, 503–413–4512, 800–237–7808(x4512)

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive Minneapolis, Minnesota 55417, 612–725–2088

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250

Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361/801–268–2431

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–341–8092

Pathology Associates Medical Laboratories, 11604 E. Indiana, Spokane, WA 99206, 509–926–2400/800–541–7891

PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 415–328–6200/800–446–5177

PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–595–0294 (formerly: Harris Medical Laboratory)

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627

Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 619–279–2600/800–882–7272

Premier Analytical Laboratories, 15201 East I–10 Freeway, Suite 125, Channelview, TX 77530, 713–457–3784/800–888–4063 (formerly: Drug Labs of Texas)

Presbyterian Laboratory Services, 1851 East Third Street, Charlotte, NC 28204, 800–473–6640

Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 810–373–9120/800–444–0106 (formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated,, National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science,, CORNING National Center for Forensic Science,)

Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–526–0947/972–916–3376 (formerly: Damon Clinical Laboratories, Damon/MetPath, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 800–574–2474/412–920–7733 (formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon, MetPath Laboratories, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, 2320 Schuetz Rd., St. Louis, MO 63146, 800–288–7293/314–991–1311 (formerly: Metropolitan Reference Laboratories, Inc., CORNING Clinical Laboratories, South Central Division)

Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 800–446–4728/619–686–3200 (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590 (formerly: MetPath,

Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)

Quest Diagnostics Incorporated, 1355 Mittel Blvd., Wood Dale, IL 60191, 630–595–3888 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratories Inc.)

Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130

Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504, 800–749–3788/254–771–8379

S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–727–8800 / 800–999-LABS

SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590 (formerly: SmithKline Bio-Science, Laboratories)

SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–637–7236 (formerly: SmithKline Bio-Science, Laboratories)

SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 352–787–9006 (formerly: Doctors & Physicians Laboratory)

SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 800–877–7484 / 610–631–4600 (formerly: SmithKline Bio-Science, Laboratories)

SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 847–447–4379/800–447–4379 (formerly: International Toxicology Laboratories)

SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176

Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507

St. Anthony Hospital Toxicology Laboratory, PO Box 205, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260

TOXWORX Laboratories, Inc., 6160 Variel Ave., Woodland Hills, CA 91367, 818–226–4373 / 800–966–2215 (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.)

UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800–492–0800 / 818–996–7300 (formerly: MetWest-BPL Toxicology Laboratory)

Universal Toxicology Laboratories, LLC, 10210 W. Highway 80, Midland, Texas 79706, 915–561–8851 / 888–953–8851

UTMB Pathology-Toxicology Laboratory, University of Texas Medical Branch, Clinical Chemistry Division, 301 University Boulevard, Room 5.158, Old John Sealy Galveston, Texas 77555–0551, 409–772–3197

The Standards Council of Canada (SCC) Laboratory Accreditation Program for Substances of Abuse (LAPSA) has been given deemed status by the Department of Transportation. The SCC has accredited the following Canadian laboratory for the conduct of forensic urine drug testing required by Department of Transportation regulations:

MAXXAM Analytics Inc., 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555 (formerly: NOVAMANN (Ontario) Inc.)

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 97–23736 Filed 9–5–97; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of Draft Environmental Impact Statement for the Establishment of the Northern Tallgrass Prairie Habitat Preservation Area in Western Minnesota and Northwestern Iowa

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has prepared a Draft Environmental Impact Statement (DEIS) which is available for public review. The DEIS evaluates the establishment of a Northern Tallgrass Prairie Habitat Preservation Area as a means of working with individuals, groups, and governmental entities to permanently preserve remnant tracts of northern tallgrass prairie. Three alternatives, including a No Action alternative are being considered. The action alternatives are aimed at permanently protecting and enhancing prairie remnants.

The Service's preferred alternative (Alternative B) is to permanently protect and enhance prairie remnants through partnerships, incentives, education, and cooperative agreements. Any conservation easements, or acquisition of full title would be done by the Service and Service Partners. Service acquisition of easements and fee interest in lands would be on a voluntary basis from willing sellers.

DATES: Public comment on the DEIS is solicited pursuant to National Environmental Policy Act regulations (40 CFR 1503.1). All agencies and individuals are urged to provide comments and suggestions for improving the DEIS. The formal comment period extends for a 60-day period from the date of distribution of the DEIS. All comments received by November 6, 1997, will be considered in preparation of the Final EIS. Formal comments will be received at any time during this 60-day period in person, by mail, or at the open house (specific locations and times are listed under **SUPPLEMENTARY INFORMATION**).

WRITTEN COMMENTS SHOULD BE ADDRESSED TO: Jane West, Project Manager, U.S. Fish and Wildlife Service, BHW Federal Building, 1 Federal Drive, Fort Snelling, MN 551121–4056.

FOR FURTHER INFORMATION CONTACT: Jane West at the address listed above or by telephone at 612/725–3306.

SUPPLEMENTARY INFORMATION: America's native grasslands are a vanishing ecosystem, and mounting evidence indicates that many species are disappearing as fast as the prairie habitats on which they depend. Few other ecosystem types have experienced as great a degree of loss and alteration. In Minnesota and Iowa, the native northern tallgrass prairie has declined to less than 1 percent of its original 25 million acres (10.1 million hectares).

Through an integrated ecosystem approach, the Service, with its partners, proposes to protect and restore fish and wildlife habitats through holistic management strategies using a wide variety of tools, and techniques. The Service proposes to participate in public and private partnerships at many levels, complementing other prairie projects such as those of the Iowa County Conservation Boards, Iowa and Minnesota Departments of Natural Resources, the Nature Conservancy, and others.

The Service will hold 10 open houses from 3:00 to 7:00 p.m. at the following locations and dates: (1) Nobles County

Courthouse, Worthington, MN (9/29/97), (2) Stub's Ranch Kitchen, Spencer, IA (9/30/97), (3) Loess Ridge Nature Center, Sioux City, IA (10/1/97), (4) Storey County Conservation Board—McFarland Park, Ames, IA (10/2/97), (5) Lime Creek Nature Center, Mason City, IA (10/3/97), (6) Northland Community & Technical College, Thief River Falls, MN (10/6/97), (7) Barnesville High School, Barnesville, MN (10/7/97), (8) Morris Wetland Management District, Morris, MN (10/8/97), (9) Lyon County Courthouse, Marshall, MN (10/9/97), and (10) MN Department of Natural Revenues, New Ulm, MN (10/10/97).

Dated: September 7, 1997.

John Christian,

Acting Regional Director.

[FR Doc. 97–23678 Filed 9–5–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–020–1430–00]

Order—Closure of Public Lands in Yellowstone County, MT

AGENCY: Bureau of Land Management (BLM), Montana, Miles City District, Billings Resource Area, Interior.

ACTION: Temporary closure of 379.9 acres of public lands to use of motorized vehicles and discharge of firearms.

SUMMARY: Notice is served that public land south of Laurel, known as the Clarks Fork of the Yellowstone property (formerly the Altman Ranch), is closed to the use of off-highway vehicles (OHVs), and the discharge of any firearm including pellet guns. The closure will be in effect from the publication date of this notice in the **Federal Register**, until public consultation is complete and an activity plan for the area is approved. OHV use includes all types of motor vehicles except for those authorized for administrative operations for farming and property maintenance or other BLM management programs. The area will remain open as a walk-in area for archery hunting, hiking, picnicking, skiing, and wildlife watching. This closure is necessary to protect the public lands, adjacent private property, and for public safety due to shooting.

The public land protected by this closure is located at:

CLARKS FORK OF THE YELLOWSTONE TRACT

Principal Meridian, Montana

T. 2 S., R. 24 E.,

sec. 22; Lots 5,6
Sec. 23: Lots 3,4 excluding Tract 1 described as Certificate of Survey #1750
Sec. 23: Lots 2,5,7,8,10,N2SW
Sec. 24: Lot 2 excluding Tract 1 described as Certificate of Survey #1750

DATES: Closure will be in effect from September 8, 1997.

FOR FURTHER INFORMATION CONTACT: Burton D. Williams, Area Manager, BLM, Billings Resource Area Office, 810 E. Main, Billings, Montana 59105 or call 406–238–1540.

SUPPLEMENTARY INFORMATION: Authority for this action is outlined in sections 302, 303, and 310 of the Federal Land Policy and Management Act of October 21, 1976, (43 U.S.C. 1716) and Title 43 Code of Federal Regulations, Subparts 8341 (43 CFR 8341.2) and 8364 (43 CFR 8364.1). Any person who fails to comply with this closure is subject to arrest and a fine up to $1000 or imprisonment not to exceed 12 months, or both. This closure applies to all persons except persons authorized by the Bureau of Land Management.

Todd S. Christensen,

Acting District Manager.

[FR Doc. 97–23670 Filed 9–5–97; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Delegation of Royalty Management Functions to States

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability of MMS standards for delegation.

SUMMARY: The Standards for Delegation of royalty management functions to States are available in print and through the Minerals Management Service (MMS) Website at http://www.rmp.mms.gov/rsfa/regs/rsfaregs.htm.

ADDRESSES: You may obtain printed copies of the Standards for Delegation from David S. Guzy, Chief, Rules and Publications Staff, Royalty Management Program, Minerals Management Service, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff, telephone (303) 231–3432, Fax (303) 231–3385, E-mail David__Guzy@mms.gov.

SUPPLEMENTARY INFORMATION: On August 13, 1996, the President signed into law the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (RSFA). RSFA amends portions of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA). Before RSFA, section 205 of FOGRMA allowed MMS to delegate only audits, inspections, and investigations to the States. RSFA amendments to section 205 now allow MMS to delegate other royalty management functions for Federal onshore oil and gas leases to requesting States. MMS published a final rule, the Delegation of Royalty Management Functions to States, 62 FR 43076, August 12, 1997. The rule stated that MMS would publish a notice in the **Federal Register** advising when the Standards for Delegation would be available. This notice advises the public of the availability of the Standards.

Dated: August 29, 1997.

Donald T. Sant,

Acting Associate Director for Royalty Management.

[FR Doc. 97–23571 Filed 9–5–97; 8:45 am]

BILLING CODE 4310–MR–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Proposed Collection: Comment Request

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections of information is necessary for the proper performance of the functions of the agency, including whether information shall have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Send comments on or before September 30, 1997.

ADDRESS INFORMATION TO: Mary Ann Ball, Bureau of Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, RRB Room 2.07C, Washington, D.C. (202) 712–1765 or via e-mail MBall@USAID.Gov.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–0510.

Form Number: N/A.

Title: Administrative of Assistance Awards to U.S. Non-Governmental Organizations, 22 CFR 226, and USAID's Automated Directive System, Chapter 303.

Type of Submission: Renewal.

Purpose: Section 635(b) of the Foreign Assistance Act (FAA) authorizes USAID to make grants and cooperative agreements with any organization and within limits of the FAA. Most of the information that USAID requests of its recipients is necessary to fulfill the requirement that USAID, as Federal agency, ensure prudent management of public funds under all of its assistance instruments. The pre-award information is necessary to assure that funds are provided for programs that further the purposes of the FAA and that the recipients have the capability to manage the program administratively and financially. The administration (post-award) requirements are based on the need to assure that the program is functioning adequately, that the funds are managed properly and that statutory and regulatory requirement are complied with.

Annual Report Burden:

Respondents: 400.

Total annual hours requested: 37,400.

Total annual responses: 1,100.

Dated: August 27, 1997.

Willette Smith,

Acting Chief, Information and Records Division, Office of Administrative Services, Bureau of Management.

[FR Dos. 97–23671 Filed 9–5–97; 8:45 am]

BILLING CODE 6116–01–M

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: September 15, 1997 at 11:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–751 (Final) (Open-End Spun Rayon Singles Yarn from Austria)—briefing and vote.
5. Inv. Nos. 701–TA–373 and 731–TA–769–775 (Preliminary) (Stainless Steel Wire Rod from Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan)—briefing and vote.
6. Outstanding action jackets:

1. Document No. GC–97–044: Approval of disposition of civil penalty, remedy, public interest, and bonding issues in Inv. No. 337–TA–372 (Certain Neodymium-Iron-Boron Magnets, Magnet Alloys, and Articles Containing Same (Enforcement)).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: September 2, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–23779 Filed 9–4–97; 11:51 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

September 2, 1997.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Theresa M. O'Malley ((202) 219–5096 ext. 143) or by E-Mail to OMalley-Theresa@dolgov. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday–Friday.

Comments should be sent to Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Title: National Longitudinal Survey of Youth 79 (NORC–4531).

OMB Number: 1220–0109 (revision).

Frequency: Biennially.

Affected Public: Individuals or households.

Number of Respondents: 8,650.

Estimated Time Per Respondent: 100.7 minutes.

Total Burden Hours: 14,512.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): 0.

Description: The information provided in this survey will be used by the Department of Labor and other government agencies to help understand and explain the employment, unemployment, and related problems faced by young men and women in this age group.

Agency: Mine Safety and Health Administration.

Title: Records of Examinations for Hazardous Conditions.

OMB Number: 1219–0083 (extension).

Frequency: Each shift.

Affected Public: Business or other for-profit Government.

Number of Respondents: 1,818.

Estimated Time Per Respondent: 1 hour 30 minutes (each shift).

Total Burden Hours: 924,453.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): 0.

Description: Requires operators of surface coal mines and surface facilities to keep records of the results of required examinations for hazardous conditions. Records consist of the nature and location of any hazardous condition found and the actions taken to abate the hazardous condition.

Theresa M. O'Malley,

Departmental Clearance Officer.

[FR Doc. 97–23660 Filed 9–5–97; 8:45 am]

BILLING CODE 4510–24–M; 4510–43–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,276 and NAFTA–01510]

Square D Company Groupe Schneider Milwaukee, WI; Notice of Revised Determination on Reconsideration

On May 13, 1997, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the **Federal Register** on May 29, 1997 (62 FR 29157).

The workers at Square D Company in Milwaukee, Wisconsin produced low and medium voltage transformers. The workers are not separately identifiable by product line. The worker petition for TAA was denied because the ''contributed importantly'' test of the Group Eligibility Requirements of Section 222 of the Trade Act of 1974, as amended, was not met. A survey of the customers of Square D Company revealed that none of the respondents increased import purchases of low and medium voltage transformers while decreasing their purchases from the subject firm. The worker petition for NAFTA-TAA was denied on the basis that there was no shift in production to Mexico or Canada, nor were there company or customer imports of low or medium voltage transformers from Mexico or Canada.

The International Brotherhood of Electrical Workers, AFL–CIO, Local 2336, alleges that Square D Company/Groupe Schneider continues to shift production of low voltage transformers from Milwaukee to Mexico.

New findings on reconsideration show that there were increasing company imports of low voltage transformers from Mexico during the relevant time period.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that the workers of Square D Company/Group Schneider, Milwaukee, Wisconsin were adversely affected by increased imports of articles like or directly competitive with transformers produced at the subject firm.

All workers of Square D Company/Groupe Schneider, Milwaukee, Wisconsin, engaged in employment related to the production of low or medium voltage transformers, who became totally or partially separated from employment on or after February 18, 1996 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974;'' and ''All workers of Square D Company/Groupe Schneider, Milwaukee, Wisconsin, engaged in employment related to the production of low or medium voltage transformers, who became totally or partially separated from employment on or after February 18, 1996, are eligible to apply for NAFTA-TAA Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 20th day of August 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–23705 Filed 9–5–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33, 465]

Border Lumber Rexford, Montana; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Acting Director of the Office of Trade Adjustment Assistance for workers at Border Lumber, Rexford, Montana. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–33, 465; Border Lumber, Rexford, Montana (August 19, 1997)

Signed at Washington, D.C. this 19th day of August, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–23706 Filed 9–5–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address show below, not later than September 18, 1997.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 18, 1997.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 4th day of August, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 8/4/97]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
33,691	Cosco, Inc. (Co.)	Bremen, GA	07/16/97	Cut and Sew Apparel.
33,692	Wright's Knitwear Corp (Co.)	Hamburg, PA	07/17/97	Men's & Boys' Knitted Outerwear.
33,693	John Chatillon & Sons (Wrks)	Greensboro, NC	07/17/97	Forge Gauges and Test Stands.
33,694	Gasbarre Products, Inc (Wrks)	Dubois, PA	07/16/97	Powder Metal Compaction Presses.

APPENDIX—Continued

[Petitions Instituted on 8/4/97]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
33,695	Magna Interior Systems (Wrks)	Del Rio, TX	05/22/97	Seat Covers.
33,696	Cooper Slide Sales Inc. (Wrks)	Genesee, PA	07/15/97	Table Slides for Dinnettes.
33,697	Employee Services Inc. (Wrks)	Rush City, MN	05/09/97	Electronic Circuit Boards Processors.
33,698	Eveready Battery Co., Inc (Comp)	Fremont, OH	07/24/97	Carbon Zinc Batteries.
33,699	General Cable Corp (IUE)	Montoursville, PA	06/17/97	Electrical Cords.
33,700	Oakmont Steel, Inc (OSWA)	Oakmont, PA	07/17/97	Railroad Wheels.
33,701	J.B.J. Fabrics, Inc. (Wkrs)	New York, NY	07/22/97	Printed Textiles for Apparel.
33,702	Western Publishing Co. (Wkrs)	Fayetteville, NC	05/07/97	Board Games Puzzles.
33,703	Willamette Industries (Wkrs)	Albany, OR	07/22/97	Laminated Veneer Lumber.
33,704	Elberton Manufacturing (Comp)	Elberton, GA	07/23/97	Ladies' Blouses and Sportswear.
33,705	DeLong Sportswear, Inc. (Wkrs)	Olney, TX	07/25/97	Advertising and Sporting Caps.
33,706	Jasper Textiles, Inc. (Wkrs)	Lumberton, NC	07/26/97	Men's Ladies' and Children's Knit Shirts.
33,707	Action Apparel, Inc. (Wkrs)	Starkville, MS	07/21/97	Knit Shirts.
33,708	RCM Convertors (Wkrs)	El Paso, TX	06/20/97	Surgical Gowns and Drapes.
33,709	N.G.N., Inc (Wkrs)	Reading, PA	07/21/97	Knit Shirts for Men, Ladies' and Children.
33,710	Innovative Acquisition (Wkrs)	New York, NY	07/23/97	Textile Converter (Acetate and Rayon Fab.).
33,711	Amex Apparel Co (Wkrs)	El Paso, TX	07/21/97	Shirts, Underwear.
33,712	Thomas and Betts Corp. (USWA)	Mercer, PA	07/22/97	Industrial and Commercial Heating Prod.
33,713	Manpower Temporary Serv. (Wkrs)	Waynesville, NC	07/18/97	Clerical Support Staff.

[FR Doc. 97–23713 Filed 9–5–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–32,981]

Dayco Products, Incorporated, Including Leased Workers of Manpower Temporary Services, Waynesville, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 11, 1997, applicable to all workers of Dayco Products, Incorporated located in Waynesville, North Carolina. The notice was published in the **Federal Register** on March 12, 1997 (62 FR 11473).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that some employees of Dayco Products, Incorporated were leased from Manpower Temporary Services to provide administrative support function services for the production of automotive parts at the Waynesville, North Carolina facility. Worker separations occurred at Manpower Temporary Services as a result of worker separations at Dayco Products, Incorporated.

Based on these findings, the Department is amending the certification to include workers of Manpower Temporary Services, Waynesville, North Carolina leased to Dayco Products, Incorporated, Waynesville, North Carolina.

The intent of the Department's certification is to include all workers of Dayco Products, Incorporated adversely affected by imports.

The amended notice applicable to TA–W–32,981 is hereby issued as follows:

All workers of Dayco Products, Incorporated, Waynesville, North Carolina and leased workers of Manpower Temporary Services, Waynesville, North Carolina engaged in employment related to administrative support function services for the production of automotive parts for Dayco Products, Incorporated, Waynesville, North Carolina who became totally or partially separated from employment on or after November 11, 1995, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 15th day of August, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–23708 Filed 9–5–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,377]

Gor-Mill Manufacturing Co., Inc., Milaca, MN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 30, 1997, applicable to all workers of Gor-Mill Manufacturing Co., Inc., Milaca, Minnesota engaged in the production of overhead projectors. The notice will be published soon in the **Federal Register.**

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New findings show that only the workers engaged in the production of overhead projector ''model 2000'' were separated from Gor-Mill Manufacturing Co., Milaca, Minnesota due to a shift in production to Juarez, Mexico.

Accordingly, the Department is amending the certification to cover only those workers who are engaged in the production of overhead projector ''model 2000'' at the subject firms' Milaca, Minnesota plant.

The intent of the Department's certification is to cover all workers of Gor-Mill Manufacturing Co., Inc., Milaca, Minnesota adversely affected by increased imports of overhead projector ''model 2000''.

The amended notice applicable to TA–W–33,377 is hereby issued as follows:

All workers of Gor-Mill Manufacturing Co., Inc., Milaca, Minnesota engaged in employment related to the production of overhead projector ''model 2000'' who became totally or partially separated from employment on or after March 19, 1996 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 19th day of August, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–23712 Filed 9–5–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,503, TA–W–33,503B, and TA–W–33,503C]

Jasper Textiles Company, Incorporated, Fremont, NC; Starlite Drive and Jasper Drive, Lumberton, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 4, 1997, applicable to all workers of Jasper Textiles Company, Incorporated, Fremont and Havelock, North Carolina. The notice was published in the **Federal Register** on June 27, 1997 (62 FR 34711).

At the request of the company and petitioners, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that worker separations are scheduled to occur in September, 1997 at the Starlite Drive and Jasper Drive production facilities of Jasper Textiles Company. The company also reported that the Starlite Dirve location will close September 8, 1997, at which time all workers will be permanently laid off. The workers are engaged in employment related to the production of ladies', men's and children's knit shirts.

The intent of the Department's certification is to include all workers of Jasper Textile Company, Incorporated adversely affected in increased imports.

The amended notice applicable to TA–W–33,503 is hereby issued as follows:

All workers and former workers of Jasper Textiles Company, Incorporated, Fremont, North Carolina (TA–W–33,503), the Starlite Drive Plant, Lumberton, North Carolina (TA–W–33,503B), and the Jasper Drive Plant, Lumberton, North Carolina (TA–W–33–503C) who became totally or partially separated from employment on or after May 7, 1996 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington D.C. this 15th day of August, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–23709 Filed 9–5–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,706]

Jasper Textiles Company, Incorporated, Lumberton, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1975, an investigation was initiated on August 4, 1997 in response to a worker petition which was filed on July 26, 1997 on behalf of workers at the Jasper Textiles Company, Incorporated, Lumberton, North Carolina. The notice will soon be published in the **Federal Register.**

An active certification covering the workers of Jasper Textiles Company, Incorporated, Jasper Drive, Lumberton, North Carolina is already in effect (TA–W–33,503C). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 15th day of August, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–23715 Filed 9–5–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,713]

Manpower Temporary Services Waynesville, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 4, 1997 in response to a worker petition which was filed on July 18, 1997 on behalf of workers at the Manpower Temporary Services, Waynesville, North Carolina. The notice will soon be published in the **Federal Register**.

An active certification covering the workers of Dayco Products, Incorporated including leased workers of Manpower Temporary Services, Waynesville, North Carolina is already in effect (TA–W–32,981). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 15th day of August, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–23707 Filed 9–5–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,414 and TA–W–33,414A]

New Warwick Mining Company, Bobtown, PA and Mt. Morris, PA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Acting Director of the Office of Trade Adjustment Assistance for workers at New Warwick Mining Company, Bobtown, Pennsylvania and Mt. Morris, Pennsylvania. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–33,414 & A; New Warwick Mining Company Bobtown & Mt. Morris, Pennsylvania (August 8, 1997)

Signed at Washington, D.C. this 8th day of August, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–23718 Filed 9–5–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a)

of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 18, 1997.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 18, 1997.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 11th day of August, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 8/11/97]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
33,714	Norway Footwear Corp. (Co.)	Norway, ME	07/25/97	Ladies and Mens' Casual Shoes.
33,715	Brandon Apparel Group (Wkrs)	Columbus, WI	07/23/97	Tee Shirts, Sweat Shirts, Shorts, Pants.
33,716	United Steering Systems (UPIU)	Grabill, IN	07/21/97	Steering Wheels, Air Bags.
33,717	Terra Industries, Inc (Wrks)	Blythesville, AR	07/23/97	Farming Chemicals.
33,718	McCoy Manufacturing #3 (Wrks)	Caledonia, MS	07/25/97	Men's Slacks.
33,719	Liberty Fabrics (Wkrs)	North Bergen, NJ	07/28/97	Lace Fabric.
33,720	Editorial America (Wrks)	Virginia Garden, FL	07/24/97	Magazines.
33,721	Power Cords and Cables Corp (Wrks)	Flushing, NY	08/04/97	Power Extension Cords.
33,722	Solid Surface Craftsman (Co.)	Schenectady, NY	07/25/97	Millwork, Cabinetry, Countertops.
33,723	ACCO USA-Swingline (IBT)	Long Island Cty, NY	08/01/97	Staplers, Staples.
33,724	Dee Forest Products (Co.)	Hood River, OR	07/28/97	Wet Process Hardboard.
33,725	Stanwood Mills, Inc (Wkrs)	Slatington, PA	07/30/97	Greige Goods (Textile Specialty Fabrics).
33,726	Thermal Engineering Intl. (Wkrs)	Joplin, MO	07/30/97	Heat Transfer Equipment.
33,727	CMS NOMECO Oil and Gas (Wkrs)	Jackson, MI	08/01/97	Crude Oil and Natural Gas.
33,728	Rayloc (Wkrs)	Atlanta, GA	07/29/97	Rebuild Drive Shafts.

[FR Doc. 97–23714 Filed 9–5–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01350]

Dayco Products, Incorporated Including Leased Workers of Manpower Temporary Services Waynesville, NC; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on January 29, 1997, applicable to all workers of Dayco Products, Incorporated, Waynesville, North Carolina. The notice was published in the **Federal Register** on February 13, 1997 (62 FR 6806).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that some employees of Dayco Products, Incorporated were leased from Manpower Temporary Services to provide administrative support function services for the production of automotive parts at the Waynesville, North Carolina facility. Worker separations occurred at Manpower Temporary Services as a result of worker separations at Dayco Products, Incorporated.

Based on these findings, the Department is amending the certification to include workers of Manpower Temporary Services, Waynesville, North Carolina leased to Dayco Products, Incorporated, Waynesville, North Carolina.

The intent of the Department's certification is to include all workers of Dayco Products, Incorporated adversely affected by imports from Mexico.

The amended notice applicable to NAFTA–01350 is hereby issued as follows:

All workers of Dayco Products, Incorporated, Waynesville, North Carolina and leased workers of Manpower Industries, Waynesville, North Carolina engaged in employment related to administrative support function services for the production of automotive parts for Dayco Products, Incorporated, Waynesville, North Carolina who became totally or partially separated from employment on or after November 11, 1995 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 15th day of August, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–23711 Filed 9–5–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–1,711]

Lionel Beaver, Labelle, FL; Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance: Correction

This notice corrects the notice for petition NAFTA-01711 which was published in the **Federal Register** of July 11, 1997 (62 FR 37284). A printing error concerning the company name and city location appears in the 7th line of the first and second column in the appendix table on page 37284. The company name should read ''Lionel Beaver'' instead of ''D and K Harvesting'' and the city location should read ''Moore Haven, Florida'' instead of ''Labelle, Florida''.

Signed at Washington, D.C. this 15th day of August, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–23716 Filed 9–5–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01562]

Lithonia Lighting, Conyers, GA; Notice of Revised Determination on Reconsideration

On July 31, 1997, the Department, issued a Notice of Affirmative Determination Regarding Application for Reconsideration regarding the petition for workers of the subject firm.

The initial investigation resulted in a negative determination issued on April 1, 1997, because criteria (3) and (4) of paragraph (a)(1) of Section 250 of the Trade Act of 1974, as amended, were not met. There was no shift of production from the Conyers, Georgia plant to Canada or Mexico, nor did Lithonia Lighting import ''M'' and industrial fluorescent lighting fixtures. The layoffs were attributable to the transfer of production to another domestic facility.

New information received by the Department shows that work performed by the employees at the subject plant was not limited to the production of ''M'' and industrial fluorescent lighting fixtures. The workers at the Conyers plant were engaged in employment related to the production of fluorescent lighting fixtures.

New findings on reconsideration reveal that company imports of fluorescent lighting fixtures from Mexico and Canada increased from 1995 to 1996, and in the first six months of 1997 compared to the first six months of 1996.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles from Canada and Mexico like or directly competitive with fluorescent lighting fixtures contributed importantly to the declines in sales or production and to the total or partial separation of workers of Lithonia Lighting, Conyers, Georgia. In accordance with the provisions of the Act, I make the following certification:

All workers of Lithonia Lighting, Conyers, Georgia, who became totally or partially separated from employment on or after March 13, 1996, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed in Washington, D.C. this 21st day of August 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–23704 Filed 9–5–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01834]

Manpower Temporary Services, Waynesville, NC; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on July 24, 1997 in response to a petition filed on behalf of workers at Manpower Temporary Services, Waynesville, North Carolina. Workers provide administrative support function services for the production of automotive parts for Dayco Products, Incorporated, Waynesville, North Carolina.

The petitioning group of workers are covered under an existing NAFTA certification (NAFTA–01350). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 15th day of August 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–23710 Filed 9–5–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01742]

Yonah Realty Company, Cornelia, GA; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on June 20, 1997 in response to a petition filed on behalf of workers at Yonah Realty Company, Cornelia, Georgia.

This case is being terminated because all production and production-related employment at the subject firm ceased more than one year prior to the date of the petition. The NAFTA Implementation Act specifies that no certification may not apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 8th day of August, 1997.

Grant D. Beale,

Acting Office Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–23717 Filed 9–5–97; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97–131]

National Environmental Policy Act; Expansion of Launch Range Operations at Wallops Flight Facility

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability of the Draft Environmental Assessment (EA)

for the expansion of launch range operations at Goddard Space Flight Center's Wallops Flight Facility (WFF).

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), and NASA policy and procedures (14 CFR Part 1216, Subpart 1216.3), NASA has prepared a Draft EA for the proposed expansion of launch range operations at Goddard Space Flight Center's WFF, Wallops Island, Virginia. NASA proposes to enhance national launch capabilities through improvements to infrastructure and the expansion of its launch range operations at WFF. The major actions proposed include: (1) establishment of a Federal Aviation Administration (FAA) licensed commercial launch site to operate from WFF under a Use Agreement with NASA; (2) improvements to real property necessary to support the expansion of launch operations; (3) expansion of operations at WFF to accommodate twelve orbital launches per year; and (4) restoration of the historical level and nature of operations on the WFF range. The improvements to infrastructure and the establishment of a licensed commercial launch site at WFF would increase the national capacity for the launching of commercial satellites and provide additional capacity for all launch operations from Wallops Island. If a decision were to be made to proceed with the proposed action, implementation would begin during the latter part of calendar year 1997.

DATES: Comments on the Draft EA must be in writing and received by NASA on or before October 8, 1997.

ADDRESSES: Written comments should be addressed to Mr. Keith Koehler, Public Affairs Office, NASA Goddard Space Flight Center, Wallops Flight Facility, Wallops Island, Virginia 23337. The Draft EA may be reviewed at the following locations:

(a) NASA Headquarters, Library, Room 1J20, 300 E Street, SW, Washington, DC 20546 (202–358–0167).

(b) NASA, Goddard Space Flight Center, Wallops Flight Facility, Public Affairs Office, Wallops Island, Virginia, 757–824–1579.

(c) Eastern Shore Public Library, PO Box 360, Accomac, Virginia, 23301 (757–787–3400).

(d) Jet Propulsion Laboratory, Visitors Lobby, Building 249, 4800 Oak Grove Drive, Pasadena, CA 91109 (818–354–5179).

(e) Spaceport U.S.A., Room 2001, John F. Kennedy Space Center, FL 32899. Please call Lisa Fowler Beforehand at 407–867–2497 so that arrangements can be made.

In addition, the Draft EA may be reviewed at the following NASA locations by contacting the pertinent Freedom of Information Act Office.

(f) NASA, Ames Research Center, Moffett Field, CA 94035 (415–604–4190).

(g) NASA, Dryden Flight Research Center, Edwards, CA 93523 (805–258–3448).

(h) NASA, Goddard Space Flight Center, Greenbelt, MD 20771 (301–286–0730).

(i) NASA, Johnson Space Center, Houston, TX 77058 (281–483–8612).

(j) NASA, Langley Research Center, Hampton, VA 23665 (757–864–2497).

(k) NASA, Lewis Research Center, 21000 Brookpark Road, Cleveland, OH 44135 (216–433–2222).

(l) NASA, Marshall Space Flight Center, AL 35812 (205–544–0031).

(m) NASA, Stennis Space Center, MS 39529 (601–688–2164).

A limited number of copies of the Draft EA are available, on a first request basis, by contacting the Wallops Flight Facility Public Affairs Office at the address or telephone number indicated herein.

FOR ADDITIONAL INFORMATION CONTACT: The Wallops Flight Facility, Public Affairs Office, Wallops Island, VA (757–824–1579).

SUPPLEMENTARY INFORMATION: The purpose of the proposed action is to enhance national launch capabilities through improvements to infrastructure and the expansion of launch range operations at WFF. An FAA licensed commercial launch site at WFF would be established to promote this expansion of launch capabilities. The licensed commercial launch site is necessary to further encourage, facilitate, and promote a competitive United States commercial launch site industry.

This Draft EA identifies potential impacts that may occur during implementation of the proposed action. The Draft EA addresses environmental impacts associated both with construction of launch support facilities and launch operations. The expansion of launch operations is proposed to include up to 12 orbital launches per year, in addition to the historical level of launches conducted at the WFF launch range. The minimum proposed improvements to WFF's real property and infrastructure necessary to accomplish the proposed expansion include: (1) modifications to existing launch pad 0–A; (2) modifications to existing buildings for payload processing facilities; and (3) the construction of a new launch pad designated as pad 0–B. WFF's proposed launch range expansion would accommodate various solid and liquid (liquid oxygen-hydrogen, liquid oxygen-kerosene) rocket motor configurations.

The following alternative locations are considered alternative sites to the proposed action: (1) Spaceport Florida, located adjacent to Cape Canaveral Air Station on the east coast of Florida; (2) California Spaceport, located at Vandenberg Air Force Base, California; (3) Kodiak Launch Complex, Kodiak, Alaska; (4) no action.

Impacts to the human environment associated with the proposed action—proposed expansion of launch range operations at WFF—can be divided into short-term (construction phase) and long-term (operational phase) impacts. The construction phase would last approximately 12–15 months. The Draft EA evaluates the environmental consequences including, but not limited to, air and water quality, noise, flora and fauna, threatened and endangered species, health and safety, solid and hazardous waste management, socioeconomics, land use, and wetlands and floodplain management. The proposed action would occur in a 100-year floodplain and result in the conversion of 1,280 square meters (about ⅓ acre) of wetlands.

After receipt and consideration of comments on the Draft EA, NASA will prepare and issue a Final EA for the proposed expansion of launch range operations at WFF. The Final EA will be used to determine whether a finding of no significant impact will be appropriate or whether there is a need to prepare an environmental impact statement.

Benita A. Cooper,

Associate Administrator for Management Systems and Facilities.

[FR Doc. 97–23654 Filed 9–5–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (97–132)]

NASA Advisory Council, Aeronautics and Space Transportation Technology Advisory Committee, Aviation Safety Reporting System Subcommittee Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a NASA Advisory Council, Aeronautics and Space Transportation Technology Advisory Committee, Aviation Safety Reporting System Subcommittee meeting.

DATES: September 23, 1997, 2:00 p.m. to 5:30 p.m., September 24, 1997, 9:00 a.m. to 5:30 p.m., September 25, 1997, 9:00 a.m. to 5:30 p.m., and September 26, 1997, 9:00 to 5:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, Ames Research Center, Building 219, Room 203, Moffet Field, CA 94035.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Connell, National Aeronautics and Space Administration, Ames Research Center, Moffet Field, CA 94035, 650/604–6654.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Agenda topics for the meeting are as follows:

—Status Reports on the Aviation Safety Reporting System (ASRS) and the Aviation Performance Measuring System (APMS)
—Presentations on Future Planning
—Information Technology Demonstrations for the ASRS and APMS Programs

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: August 29, 1997.

Leslie M. Nolan,

Advisory Committee Management Officer.

[FR Doc. 97–23653 Filed 9–5–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SKILL STANDARDS BOARD

Notice of Open Meeting

AGENCY: National Skill Standards Board.

ACTION: Notice of open meeting.

SUMMARY: The National Skill Standards Board was established by an Act of Congress, the National Skill Standards Act, Title V, Pub. L. 103–227. The 27-member National Skill Standards Board will serve as a catalyst and be responsible for the development and implementation of a national system of voluntary skill standards and certification through voluntary partnerships which have the full and balanced participation of business, industry, labor, education and other key groups.

TIME AND PLACE: The meeting will be held from 8:30 a.m. to approximately 3:30 p.m. on Friday, September 26, 1997, in Mount Vernon Salons A, B & C at the Madison Hotel located at 15th and M Streets, NW, Washington, D.C. 20005

AGENDA: The agenda for the Board Meeting will include: an update from the Board's committees, representatives from the groups convening the Voluntary Partnerships, and a preliminary report on how the Board and the American National Standards Institute intend to work together.

PUBLIC PARTICIPATION: The meeting, from 8:30 a.m. to 3:30 p.m., is open to the public. Seating is limited and will be available on a first-come, first-served basis. Seats will be reserved for the media. Individuals with disabilities should contact Pat Warfield at (202) 254–8628, if special accommodations are needed.

FOR FURTHER INFORMATION CONTACT: Tracy Marshall, Manager of Program Operations at (202) 254–8628.

Signed at Washington, D.C., this 29th day of August, 1997.

Edie West,

Executive Director, National Skill Standards Board.

[FR Doc. 97–23703 Filed 9–5–97; 8:45 am]

BILLING CODE 4510–23–M

NUCLEAR REGULATORY COMMISSION

[IA 97–068]

Order Superseding Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

Aharon Ben-Haim, Ph.D. (Dr. Ben-Haim), Medical Physicist, Upper Montclair, New Jersey, is a contractor consultant for Newark Medical Associates, P.A. (licensee), the holder of Byproduct Nuclear Material License No. 29–30282–01 (license) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The license authorizes possession and use of any radiopharmaceutical identified in 10 CFR 35.200 for any imaging and localization procedure approved in 10 CFR 35.200. The license was originally issued on September 25, 1996, and is due to expire on September 30, 2001.

II

During a new license inspection conducted on January 29, 1997, at the licensee's facility, several apparent violations of NRC requirements were identified. Subsequent to the inspection, the NRC initiated an investigation which led the NRC to issue to Dr. Ben-Haim, on July 31, 1997, an Order Prohibiting Involvement in NRC Licensed Activities (Effective Immediately) Pending Further Order (62 FR 43357). That Order was issued pending completion of the NRC staff review of the results of the investigation, which was conducted by the NRC's Office of Investigations (OI). The NRC staff's review of the results of the OI investigation is now complete.

III

The OI investigation focused in part on Dr. Ben-Haim's actions in causing the licensee to be in violation of NRC requirements. The NRC learned during the investigation that Dr. Ben-Haim, in his capacity as a contractor-consultant to the licensee, had prepared the license application (NRC Form 313) dated February 21, 1996, for Newark Medical Associates, and that the license application was inaccurate in that it named Gerard W. Moskowitz, M.D., (Dr. Moskowitz) as the only authorized user and Radiation Safety Officer (RSO) without Dr. Moskowitz's consent or knowledge, and without Dr. Moskowitz's ever having been affiliated or associated with the licensee. Dr. Moskowitz did not ever perform the role of authorized user or RSO at the licensee's facility, and did not become aware that he was listed on the application and the license until notified by the NRC on February 6, 1997, more than four months after the license was originally issued. These inaccurate statements in the license application prepared by Dr. Ben-Haim, formed, in part, the basis for the issuance of the license to Newark Medical Associates on September 25, 1996.

During the period from November 1997 through February 6, 1997, Dr. Ben-Haim, in his role as contractor-consultant to the licensee, aided and assisted the licensee in continuing to conduct NRC-licensed activities even though the licensee did not employ the authorized user or the RSO named in the license application and, subsequently, on the NRC license, nor did the named individual serve in these capacities. Based on the results of the OI investigation, the NRC has determined that Dr. Ben-Haim's actions constitute

violations of 10 CFR 30.10, ''Deliberate misconduct'', as follows:

A. 10 CFR 30.10 (a)(1), (c)(1) and (c)(2) require, in part, that any contractor of a licensee not engage in deliberate misconduct that causes or, but for detection, would have caused, a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation of any license issued by the Commission; or any requirement, procedure, instruction, contract, purchase order or policy of a licensee.

1. 10 CFR 35.21 requires that a licensee appoint a Radiation Safety Officer responsible for implementing the radiation safety program; and requires that the licensee, through the Radiation Safety Officer, ensure that radiation safety activities are being performed in accordance with approved procedures and regulatory requirements in the daily operation of the licensee's byproduct material program.

10 CFR 35.13 requires that a licensee apply for and receive a license amendment before it changes Radiation Safety Officers.

Byproduct Material License No. 29–30282–01, Condition 12, dated September 25, 1996 states that the Radiation Safety Officer for this License is Gerard W. Moskowitz, M.D.

During the period from November 1996 through February 6, 1997, Dr. Ben-Haim caused Newark Medical Associates to be in violation of the requirements in Section III.A.1 above by performing the functions of the Radiation Safety Officer (RSO), even though he knew that: (1) The RSO named on the license application and, subsequently, on the license, was Gerard Moskowitz, M.D., and (2) he, Dr. Ben-Haim, was not the RSO named on the license application or the license.

2. 10 CFR 35.11 (a) and (b) permit an individual to use licensed material for medical use only in accordance with a specific license issued by the Commission or under the supervision of an authorized user as provided in 10 CFR 35.25.

10 CFR 35.53(c)(3) requires, in part, that the licensee retain a record of the measurement of each dosage of a photon-emitting radionuclide prior to medical use to include, among other things, the prescribed dosage. Pursuant to 10 CFR 35.2: *Prescribed dosage* means the quantity of radiopharmaceutical activity as documented in a written directive or diagnostic clinical procedures manual or in any appropriate record in accordance with the directions of the authorized user; *Written directive* means an order in writing for a specific patient dated and signed by an authorized user; *Diagnostic clinical procedures manual* means a collection of written procedures that includes, among other things, where each diagnostic procedure has been approved by the authorized user and the radiopharmaceutical, dosage, and route of administration; and *Authorized user* means a physician, dentist, or podiatrist who is (1) Board certified by at least one of the boards listed in Paragraph (a) of 10 CFR Part 35, sections 35.910, 35.920, 35.930, 35.940, 35.950, or 35.960, (2) identified as an authorized user on a Commission or Agreement State license that authorizes the medical use of byproduct material, or (3) identified as an authorized user on a permit issued by a Commission or Agreement State specific license of broad scope that is authorized to permit the medical use of byproduct material.

Byproduct Material License No. 29–30282–01, dated September 25, 1996, states in Condition 13, that licensed material is only authorized for use by, or under the supervision of, Gerard W. Moskowitz, M.D.

Byproduct Material License No. 29–30282–01, dated September 25, 1996, requires in part, in Condition 14, that the licensee conduct its program in accordance with the statements, representations, and procedures contained in the Application dated February 21, 1996. This application, which was prepared by Dr. Ben-Haim, requires, in Item 10.6, ''Ordering and Receiving'', that the licensee follow procedures in Appendix K to Regulatory Guide 10.8, Revision 2. The procedures in Appendix K require, in part, that the Radiation Safety Officer or a designee must authorize each order for radioactive materials and ensure that the requested materials and quantities are authorized by the license for use by the requesting authorized user.

During the period from November 1996 through February 6, 1997, Aharon Ben-Haim, who is not a physician, caused Newark Medical Associates to be in violation of the requirements in Section III.A.2 above by prescribing, in writing, the radiopharmaceuticals and dosages to be ordered and administered to patients by technologists for bone scans and cardiac images (which are medical uses), even though he knew that: (1) He was not an authorized user nor under the supervision of an authorized user; (2) he had prepared the Newark Medical Associates license application to specify the name of Gerard Moskowitz as the sole physician authorized user and Radiation Safety Officer; (3) Gerard Moskowitz, as the sole physician user named on the license, was the only individual who could prescribe a radiopharmaceutical and dosage for a technologist to administer to a patient; and (4) Gerard Moskowitz, as the Radiation Safety Officer named on the license, was the only individual who could authorize, or delegate to a technologist the authority to authorize, each order of byproduct material for medical use.

IV

Based on the above, the NRC staff has concluded that Dr. Ben-Haim, acting as a contractor consultant to the licensee, deliberately caused the licensee to be in violation of NRC requirements by the licensee's conducting licensed activities without the authorized user or RSO named on the license application and on the NRC license. The NRC must be able to rely on the licensee and its contractors to comply with NRC requirements. Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public, including patients receiving radiation from byproduct material for medical purposes, will be protected if Dr. Ben-Haim is permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Dr. Ben-Haim be prohibited from any involvement in NRC-licensed activities for a period of five years. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Dr. Ben-Haim's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

V

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR 30.10, Part 35, and 10 CFR 150.20, *It Is Hereby Ordered That, Effective Immediately,*

1. The Order of July 31, 1997, is superseded, in its entirely.

2. Dr. Ben-Haim is prohibited from engaging in NRC-licensed activities for a period of five years from July 31, 1997. This prohibition applies to Dr. Ben-Haim as an officer, employee, contractor, consultant, or other agent of a licensee and includes, but is not limited to: (1) Any use of NRC-licensed materials; (2) supervising licensed activities, including (but not limited to) hiring of individuals engaged in licensed activities or directing or managing individuals engaged in licensed activities; (3) any involvement in radiation safety activities including (but not limited to) functions of the

Radiation Safety Officer; and (4) development of license applications, procedures, and policies to meet license requirements, providing training to meet license requirements, and providing professional services to meet license requirements. NRC-licensed activities are those activities that are conducted pursuant to a specific or general NRC license, including, but not limited to, those activities of Agreement State licensees conducted in areas of NRC jurisdiction pursuant to the authority granted by 10 CFR 150.20.

3. For those facilities, other than Newark Medical Associates, P.A., where Dr. Ben-Haim was involved in NRC-licensed activities as of July 31, 1997, Dr. Ben-Haim must: (1) Immediately cease such activities; (2) inform the NRC of the name, address and telephone number of the NRC-licensed entities where the activities were being conducted; and (3) provide a copy of this order to all such NRC-licensed entities within five business days of any ruling by an NRC Atomic Safety and Licensing Board upholding the immediate effectiveness of this requirement of this Order or, if Dr. Ben-Haim does not challenge the immediate effectiveness of this Order, within five business days of the termination of the time to request a hearing in Section VI of this Order.

4. For those facilities, other than Newark Medical Associates, P.A., where Dr. Ben-Haim was involved in NRC-licensed activities for the period beginning three years prior to the date of this Order, Dr. Ben-Haim must, within 30 days of the date of this Order, inform the NRC of the name, address and telephone number of the NRC-licensed entities where those activities were conducted.

5. For the five years immediately following the five year prohibition in paragraph V.2, the first time that Dr. Ben-Haim is employed or involved in NRC-licensed activities following the five year prohibition, he shall notify the Director, Office of Enforcement, at the address in Section VI below, within 20 days of engaging in NRC-licensed activities, including activities under an Agreement State license when activities under that license are conducted in areas of NRC jurisdiction pursuant to 10 CFR 150.20. This notice shall include the name, address, and telephone number of the NRC or Agreement State licensee and the location where licensed activities will be performed; and shall include a statement as to why the NRC should have confidence that Dr. Ben-Haim will not, in the future, commit deliberate violations of Commission requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by the licensee of good cause.

VI

In accordance with 10 CFR 2.202, Dr. Ben-Haim must, and any other person adversely affected by this Order may, submit an answer to this Order and may request a hearing on this Order, on or before September 19, 1997. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for the extension. Dr. Ben-Haim may consent to this Order. Unless Dr. Ben-Haim consents to this Order, Dr. Ben-Haim shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Dr. Ben-Haim or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Atomic Safety and Licensing Board appointed to preside in this proceeding. Copies shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Dr. Ben-Haim if the answer or hearing request is by a person other than Dr. Ben-Haim. If a person other than Dr. Ben-Haim requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Dr. Ben-Haim or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Dr. Ben-Haim may, in addition to demanding a hearing, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error. The Atomic Safety and Licensing Board designated to preside in the proceeding on the Order of July 31, 1997, has already granted a joint motion in which it set September 3, 1997, as the date by which Dr. Ben-Haim should move to set aside the immediate effectiveness of this Order.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final on September 19, 1997, without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. *An Answer or a Request for Hearing Shall Not Stay the Immediate Effectiveness of this Order.*

Dated at Rockville, Maryland this 27th day of August 1997.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 97–23695 Filed 9–5–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Applications for Licenses To Import/Export Nuclear Waste

Pursuant to 10 CFR 110.70(b) ''Public notice of receipt of an application'', please take notice that the Nuclear Regulatory Commission has received the following applications for licenses to import and export radioactive waste materials. Copies of the applications are on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, N.W., Washington, D.C.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington D.C. 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; and the Executive Secretary, U.S. Department of State, Washington, D.C. 20520.

The information concerning the application follows.

NRC Import and Export License Applications

Name of applicant; date of application, date received, application number	Description of material			Country of origin
	Material type	Total (kilograms)qty	End use	
Diversified Scientific Services .... July 23, 1997 July 25, 1997 IW004	Radioactive waste in the form of liquid products.	15,000,000	For processing into solids & return to Canada.	Canada
Diversified Scientific Services .... July 23, 1997 July 25, 1997 XW002	Radioactive waste in the form of solids.	15,000,000	Rtn of waste after processing	Canada.

Dated this 28th day of August 1997 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Ronald D. Hauber,

Director, Division of Nonproliferation, Exports and Multilateral Relations Office of International Programs.

[FR Doc. 97–23699 Filed 9–5–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–282, 50–306 and 72–10]

Northern States Power Company, Prairie Island Nuclear Plant and Prairie Island Independent Spent Fuel Storage Installation, Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision concerning a Petition dated May 28, 1997, filed by the Prairie Island Indian Community (Petitioners) under Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206). The Petition requested that the NRC (1) determine that Northern States Power Company (the licensee) violated the requirements of 10 CFR 72.122(l) by using its Materials License No. SNM–2506 for an Independent Spent Fuel Storage Installation (ISFSI) prior to establishing conditions for safely unloading the TN–40 dry storage containers; (2) suspend Materials License No. SNM–2506 for cause under 10 CFR 50.100 until such time as all significant issues in the unloading process, as described in the Petition, have been resolved, the unloading process has been demonstrated, and until an independent third-party review of the TN–40 unloading procedure has been conducted; (3) provide Petitioners an opportunity to participate fully in the reviewing of the unloading procedure for the TN–40 cask, hold hearings and allow Petitioners to participate fully in these and any other procedures initiated in response to the Petition; and (4) update the Technical Specifications for the Prairie Island ISFSI to incorporate mandatory unloading procedure requirements.

The Director of the Office of Nuclear Reactor Regulation has determined that the Petition should be denied for the reasons stated in the ''Director's Decision Under 10 CFR 2.206'' (DD–97–18), the complete text of which follows this notice. The decision and documents cited in the decision are available for public inspection and copying in the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, MN.

A copy of this decision has been filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c). As provided therein, this decision will become the final action of the Commission 25 days after issuance unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 29th day of August 1997.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

Director's Decision Under 10 CFR 2.206

I. Introduction

On May 28, 1997, the Prairie Island Indian Community filed a Petition pursuant to Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206) requesting that the U.S. Nuclear Regulatory Commission (NRC) take action to accomplish the following:

1. Determine that Northern States Power (NSP) violated the requirements of 10 CFR 72.122(l) by using its Materials License No. SNM–2506 for an Independent Spent Fuel Storage Installation (ISFSI) prior to establishing conditions for safely unloading the TN–40 dry storage containers;

2. Suspend Materials License No. SNM–2506 for cause under 10 CFR 50.100 until such time as all significant issues in the unloading process, as described herein [the Petition], have been resolved, the unloading process has been demonstrated, and until an independent third-party review of the TN–40 unloading procedure has been conducted;

3. Provide Petitioners an opportunity to participate fully in the reviewing of the unloading procedure for the TN–40 cask, hold hearings and allow Petitioners to participate fully in these and any other procedures initiated in response to this Petition; and

4. Update the Technical Specifications (TS) for the Prairie Island ISFSI to incorporate mandatory unloading procedure requirements.

The Petition has been referred to me pursuant to 10 CFR 2.206. The NRC letter dated June 27, 1997, to Byron White, on behalf of the Petitioners, acknowledged receipt of the Petition and provided the NRC staff's determination that the Petition did not require immediate action by the NRC. A notice of receipt was published in the **Federal Register** on July 3, 1997 (62 FR 36085).

On the basis of the NRC staff's evaluation of the issues and for the reasons given below, the Petitioners' requests are denied.

II. Background

On October 19, 1993, the NRC issued Materials License No. SNM–2506 to NSP (the licensee) to allow storage of spent nuclear fuel in TN–40 dry storage casks, designed by Transnuclear Incorporated, at the ISFSI located at the Prairie Island Nuclear Plant. No spent nuclear fuel was allowed to be loaded into a storage cask at Prairie Island until several preoperational license conditions were satisfied. Among the preoperational license conditions were a required training exercise (dry-run) of the loading, handling, and unloading activities for the TN–40 casks and the implementation of written procedures describing the actions to be taken during

operation, off-normal, and emergency conditions associated with the Prairie Island ISFSI. The NRC issued TS defining operating limits, surveillance requirements, design features, and administrative controls as Appendix A to Materials License No. SNM–2506.

A report dated April 20, 1995, submitted by the licensee to the NRC pursuant to 10 CFR 72.82(e), provided the results of the preoperational tests that were required to be performed by the licensee before loading of spent fuel into a TN–40 cask. On May 11, 1995, the NRC granted a schedular exemption to the provision of 10 CFR 72.82(e) that requires licensees to submit the preoperational test results at least 30 days before receipt of spent fuel into the ISFSI. The basis for the exemption was the fact that the NRC staff had reviewed cask fabrication records, observed portions of the preoperational test activities as they occurred, and completed its review of the report submitted on April 20, 1995. On May 12, 1995, the licensee began loading spent fuel assemblies into a TN–40 cask. The licensee subsequently placed the cask, and casks loaded since that time, onto the storage pad within the Prairie Island ISFSI.

NRC regulations include a requirement that an ISFSI be designed to provide for the ready retrieval of spent fuel or high-level radioactive waste for further processing or disposal. This regulation, 10 CFR 72.122(l), provides as follows:

> Retrievability. Storage systems must be designed to allow ready retrieval of spent fuel or high-level radioactive waste for further processing or disposal.

Certain events or conditions could warrant removing a TN–40 cask from the Prairie Island ISFSI and returning it to the spent fuel pool and unloading the stored fuel assemblies. In addition to the regulatory requirements in 10 CFR 72.122(l) pertaining to retrieval of the fuel assemblies for further processing or disposal, the TS for the Prairie Island ISFSI requires the licensee to take corrective actions in response to those design-basis events or conditions that may challenge the integrity of the storage cask or the cladding of the spent fuel assemblies. For example, Section 2.3, ''Maximum Cask Lifting Height,'' Section 3/4.3, ''Maximum Helium Leak Rate,'' and Section 3/4.5, ''Maximum Cask Surface Temperature,'' of the TS include provisions for unloading of a TN–40 storage cask in response to the specified events or conditions.

NRC regulations in 10 CFR Part 72 require that the design of the storage system and the procedures implemented by specific licensees support the unloading activity, whether it is being performed to allow further processing or disposal of the spent fuel or it is required as part of the response to an unplanned event or condition, while preventing gross ruptures of the fuel cladding in order to prevent operational safety problems. Unloading procedures should also include contingencies in case fuel cladding has degraded during storage such that additional measures are necessary to address increased radiological hazards during the unloading process.

NRC regulations, facility licenses, and NRC-approved quality assurance programs require licensees to establish and maintain a formal process for the preparation and issuance of procedures and changes thereto. NRC assessments of licensee procedures are generally conducted as part of the NRC's inspection program. In this instance, the major procedures pertaining to dry cask storage activities at Prairie Island, including the procedure for unloading a cask, were reviewed by the NRC staff during a special inspection conducted from January 24 through May 11, 1995. In addition to the review of the licensee's facility and procedures, the NRC inspectors observed preoperational testing that the licensee was required to perform before loading casks with spent fuel assemblies. The inspection findings are documented in NRC Inspection Report 50–282/95002; 50–306/95002; 72–10/95002(DRP), dated June 30, 1995.

The NRC inspectors identified several instances in which the procedures for dry cask storage activities that the licensee had in place at the beginning of the inspection, including the procedures for loading and unloading of the TN–40 casks, did not ensure compliance with the requirements of the license. Although the inspectors were able to verify that the licensee corrected the identified procedural deficiencies during the course of the inspection, a Notice of Violation was issued to the licensee for failing to satisfy Criterion V of Appendix B to 10 CFR Part 50, which for activities affecting quality, requires the preparation and adherence to procedures appropriate to the circumstances. In addition, the inspectors identified weaknesses in the licensee's initial performance in overseeing the activities of the cask vendor and in overall planning for dry cask storage activities. However, on the basis of the licensing reviews and inspection findings, documented in Inspection Report 50–282/95002; 50–306/95002; 72–10/95002(DRP), the NRC staff concluded that as of May 1995, the licensee had corrected the identified deficiencies and was ready to safely load and, if necessary, unload spent nuclear fuel in TN–40 casks.

In July 1995, the NRC staff issued an action plan for dry cask storage to manage the resolution of a variety of technical and process issues that were identified during the licensing reviews and inspections completed for the first several ISFSI facilities. An item related to the loading and unloading of dry storage casks was added to the action plan, in part to ensure that the importance of the unloading procedures was emphasized to licensees and technical issues related to unloading problems were resolved. Addition of an item pertaining to unloading was deemed prudent because the staff observed that some unloading procedures implemented by licensees neglected to consider contingencies and assumptions related to possible fuel degradation, gas sampling techniques, cask design issues, radiation protection requirements, and the thermal-hydraulic behavior of a cask during the process of cooling and filling it with water from the spent fuel pool.

To implement the action plan, the NRC staff formed a working group to identify issues associated with loading and unloading processes for dry storage casks and to propose means of informing the industry and the NRC staff of those issues. The working group considered industry experiences, concerns identified during reviews and inspections, and other issues related to loading and unloading procedures. The working group completed its reviews in April 1996. The concerns related to unloading procedures reviewed by the working group were found to involve either (1) isolated occurrences that had been adequately resolved by site-specific corrective actions or (2) generic issues that were addressed by incorporating remedial measures into ongoing staff activities, such as the preparation of revised inspection procedures or other guidance documents.

To fulfill some of the goals included in its dry cask storage action plan, the NRC staff has emphasized the importance of unloading procedures and shared observations with licensees using or considering dry cask storage during opportunities such as the Spent Fuel Storage and Transportation Workshop held in May 1996 and meetings with individual licensees. The staff revised inspection procedures to specifically instruct NRC inspectors to review unloading procedures developed by licensees and to identify those issues that warrant particular attention. Guidance included in NRC Inspection

Procedure 60855, ''Operation of an ISFSI,'' issued February 1, 1996, states:

For unloading activities, attention should be paid to how the licensee has prepared to deal with the potential hazards associated with that task. Some potential issues may include: the radiation exposure associated with drawing and analyzing a sample of the canister's potentially radioactive atmosphere; steam flashing and pressure control as water is added to the hot canister; and filtering or scrubbing the hot steam/gas mixture vented from the canister, as it is filled with water.

Similar guidance was included in NUREG–1536, ''Standard Review Plan for Dry Cask Storage Systems,'' issued in January 1997. Application of the revised guidance ensures that recent and future reviews will address the adequacy of unloading procedures developed by licensees. The staff also issued NRC Information Notice 97–51, ''Problems Experienced with Loading and Unloading Spent Nuclear Fuel Storage and Transportation Casks,'' dated July 11, 1997, to inform licensees of operating experiences and problems encountered with the loading and unloading of storage and transportation casks for spent nuclear fuel.

To address those ISFSIs that began operation before the improvements in the NRC's review and inspection guidance, the staff performed audits or inspections of those licensee programs for which the inspection record did not document whether the unloading procedures adequately addressed the major issues included in the action plan. Regarding Prairie Island, the staff reviewed the available information and determined that additional reviews or inspections were not necessary because the assessment of the unloading procedure performed as part of the inspection documented in NRC Inspection Report 50–282/95002; 50–306/95002; 72–10/95002(DRP) adequately addressed the concerns included in the NRC action plan.

III. Discussion

The Petition requests four actions by the NRC on the basis of the contention that the unloading procedure implemented by the licensee was inadequate and, therefore, the licensee violated the NRC regulation requiring it to have the ability to readily retrieve spent fuel or high-level radioactive waste for further processing or disposal.

Item 1: Determine That the Licensee Violated 10 CFR 72.122(l)

In support of the Petition's contention that the licensee violated NRC requirements, the Petitioners claim that the procedure to unload a TN–40 cask at Prairie Island has not been adequately evaluated or tested because neither the NRC nor NSP has completely demonstrated that a TN–40 dry cask can be unloaded after it has remained on the storage pad for a number of years. The Petitioners state that their request is supported by the fact that the preoperational test results for the Prairie Island ISFSI were submitted to the NRC on the day before the unloading procedure was approved by the licensee's Operations Committee. The Petitioners also express concern that only portions of the licensee's unloading procedure were tested during the required preoperational tests and, therefore, the tests did not provide assurance that an unloading can be done safely. In addition, the Petitioners state that procedures for unloading a cask should address specific concerns regarding failed fuel recovery and possible contamination of the spent fuel pool, venting of radioactive gases, functional checks of radiation monitoring and ventilation systems, and the build-up of steam when water is pumped into the cask as part of the unloading process.

As previously mentioned, cask designs and associated procedures are required to support the unloading of the spent fuel assemblies either to support further processing or disposal or in response to an unplanned event or condition that may challenge the integrity of the storage cask or the cladding of the spent fuel assemblies. Although the NRC staff agrees with the Petitioners' premise that actually unloading a storage cask would likely result in licensees learning lessons that could result in additional enhancements to unloading procedures, the staff does not agree that an actual demonstration of the unloading procedure at Prairie Island is warranted. In addition to the staff's review of the procedure for unloading a TN–40 cask at Prairie Island, reasonable assurance that the TN–40 casks can be safely unloaded is provided by a variety of experiences related to the use and storage of radioactive materials. These experiences include the dry-run exercises that were performed to verify key aspects of unloading procedures for the TN–40 cask; related research sponsored by the commercial nuclear industry, the U.S. Department of Energy, and the NRC; actual loading and unloading of transportation casks; loading of storage casks; handling of spent fuel assemblies under various conditions; and performing relevant maintenance and engineering activities associated with reactor facilities.

Regarding the Petitioners' concerns pertaining to the dates of the submittal of preoperational tests and the approval of the licensee's unloading procedure, the NRC staff identified this discrepancy in Inspection Report 50–282/95002; 50–306/95002; 72–10/95002(DRP). The administrative controls included in the TS for the Prairie Island ISFSI require that the Operations Committee review and approve procedures and changes thereto. The approval of the Operations Committee is usually the last step in the process for preparing or revising a procedure. The fact that the Operations Committee approved the procedure shortly after submittal of the preoperational test results and before fuel loading satisfied the preoperational license condition to implement written procedures before loading spent nuclear fuel into a TN–40 cask. This matter does not, therefore, represent a violation of NRC requirements or introduce concerns pertaining to the technical adequacy of the unloading procedure.

The Petitioners identified several concerns pertaining to the lack of specific guidance in the unloading procedure to address a scenario in which significant fuel degradation occurs during storage. The NRC staff agrees with the Petitioners that such a scenario would complicate the unloading process by requiring additional measures and precautions to limit the release of radioactive materials from the cask into parts of the reactor facility and nearby environs. The licensee's unloading procedure includes a step to sample the atmosphere within the cask cavity to test for radioactive and flammable gases before venting the cask cavity and loosening the bolts securing the cask lid. Following the analysis of the gas sample, the licensee's unloading procedure includes a hold point to allow personnel to determine whether additional steps or precautions are warranted. While acknowledging many of the Petitioners' legitimate concerns regarding the potential difficulties in retrieving failed fuel from dry storage casks, the NRC staff has concluded that licensees need not be required to incorporate specific guidance into the normal unloading procedure to address this unlikely situation. The staff's conclusion is based, in part, on the fact that the required compensatory actions and precautions needed to address such situations may vary significantly, depending on the actual results from the analysis of the gas sample. Requiring the licensee to include contingencies or steps in the unloading procedure to address the unlikely event of failed fuel may unnecessarily complicate and delay the unloading of fuel assemblies that

have remained intact during storage. On the basis of licensees' experiences in developing and implementing plans to address the problem of fuel assemblies damaged during reactor operations, in handling radioactive wastes of various forms, and in resolving other comparable problems, the NRC staff has confidence that licensees could, if necessary, develop a plan to retrieve damaged fuel from a storage cask while minimizing the radiological consequences to plant workers and the general public. In addition to the general confidence of the NRC staff that the technical problems associated with retrieving failed fuel could be overcome, requirements for planning and executing such an activity are contained in the licenses issued for the Prairie Island ISFSI and the Prairie Island Nuclear Generating Plant, and NRC regulations in 10 CFR Parts 20, 50, and 72. The NRC staff has, therefore, accepted gas sampling and defined hold or decision points before breaching the cask confinement boundary as an adequate means to address concerns pertaining to the unlikely degradation of fuel assemblies during storage.

The specific issues raised by the Petitioners to support their claim that the licensee's unloading procedure is deficient are addressed below.

(a) Failed Fuel Considerations

As previously discussed, the NRC staff has accepted that procedures developed by licensees to support unloading of dry storage casks do not need to address the retrieval of failed fuel provided that measures to detect possible fuel degradation and a defined hold point for determination of possible compensatory actions are appropriately placed within the subject procedures. As documented in NRC Inspection Report 50–282/95002; 50–306/95002; 72–10/95002(DRP), the licensee had originally failed to incorporate a step in the unloading procedure for taking a gaseous sample from the cask in order to ensure that fuel degradation had not occurred during storage. However, in response to the findings of the NRC inspectors, the licensee incorporated sampling of the cask atmosphere and a hold point for deliberation into the unloading procedure and the revised procedure was in place before spent nuclear fuel was loaded into a TN–40 cask. The NRC staff has found that this action, in combination with the requirement that spent fuel assemblies loaded into TN–40 casks be free of gross cladding defects, provides reasonable assurance that the licensee will not unknowingly breach the confinement boundary of a cask containing failed fuel. In the unlikely event that the gaseous sample indicates that spent fuel assemblies have degraded during storage, the unloading procedure instructs the licensee's Operations Committee to add steps or precautions to the procedure in order to minimize the radiological consequences of retrieving the failed fuel. The NRC staff has found this approach to be acceptable and does not require the licensee's normal unloading procedure to include contingency actions to address the possible release of radioactive materials to parts of the reactor facility, including the spent fuel pool, that may occur if fuel assemblies degrade during storage. The NRC staff believes, however, that the Petitioners have identified valid concerns regarding the potential recovery of fuel assemblies that have unexpectedly degraded during storage. As previously mentioned, the staff believes that the regulations and licenses issued by the NRC require the licensee to address these and other problems that may occur in the unlikely event that fuel assemblies that have degraded during storage need to be unloaded from dry storage casks.

(b) Venting of Radioactive Gases

The possible need to vent radioactive gases from a cask is among the issues that the licensee would need to address if the required sampling of the atmosphere within a cask indicates that the spent fuel assemblies have experienced unanticipated degradation during storage. As with the concern regarding the contamination of the spent fuel pool, the need to vent the cask while minimizing the radiological consequences of unloading a cask containing failed fuel is an issue that the licensee would need to address before revising the procedure and proceeding with the unloading process. In addition to ensuring that the unloading activity results in occupational doses and doses to members of the public that are as low as is reasonably achievable (see 10 CFR 20.1101), the licensee would need to perform the venting of a cask containing failed fuel in accordance with the Prairie Island Nuclear Generating Plant Facility Operating Licenses, associated TS, and applicable regulations.

(c) Radiation Monitors

The Petitioners contend that the unloading procedure must include a ''stop-check'' to verify that ventilation systems and radiation monitors are functioning before the venting of a cask is performed. Although agreeing with the Petitioners' general premise that prerequisites to preforming procedures should include establishing confidence in the tools and equipment being used, the NRC staff notes that during the anticipated unloading of spent nuclear fuel that has not degraded during storage, special ventilation or radiation monitoring equipment beyond that specified in the licensee's unloading procedure and radiation protection program is not required. The unloading procedure requires the involvement of radiation protection personnel and the activity must be controlled in accordance with the licensee's radiation protection program, which includes provisions for the maintenance and calibration of radiation detectors. Although the venting process is not expected to need ventilation systems equipped with filters and radiation monitors, the spent fuel pool special ventilation system could be used if necessary. The spent fuel pool special ventilation system is required to be operable during subsequent steps in the procedure if spent fuel assemblies are being moved and the system must be tested and maintained in accordance with the TS for the Prairie Island Nuclear Generating Plant. In the unlikely event that the licensee needs to unload a cask containing degraded fuel assemblies, confirming the operability of those ventilation systems and additional radiation monitoring equipment being used to minimize the release of radioactive materials is an activity that the licensee would need to address before revising the procedure and proceeding with the unloading process.

(d) Steam Build-up

The Petitioners expressed concerns regarding the reaction of the cask and stored fuel assemblies to the introduction of spent fuel pool water during the execution of the unloading procedure. The unloading procedure includes the partial immersion of the TN–40 cask into the spent fuel pool, connection of hoses to the vent and drain connections, and the slow introduction of spent fuel pool water to the cask cavity and stored fuel assemblies. The procedure instructs personnel to continuously monitor the temperature and pressure instrumentation installed on the vent connection and to stop pumping water if the pressure exceeds 10 psig or the temperature exceeds 240 °F. In the staff's judgment, the cooling process imposed by these limitations on temperatures and pressures at the vent port of the cask will adequately ensure that the cooling of the cask and spent fuel is gradual and, thereby, prevent safety problems that could hypothetically result from damage to the

cask or the fuel assemblies because of stresses induced by a poorly controlled addition of cooling water from the spent fuel pool.

The Petitioners expressed concerns pertaining to the range of the instrumentation used during the venting of a TN–40 cask and stated that higher ranges for temperature and pressure are necessary. The instrumentation ranges specified in the unloading procedure's drawing of the cask vent port adapter are 50–300 °F for temperature and 0–30 psig for pressure. While not judging if these are the optimum ranges for the instrumentation, the NRC staff finds that the ranges are adequate to support the administrative limits of 240 °F and 10 psig established in the procedure and the related response action of stopping the addition of water to the cask if these administrative limits are exceeded. Regarding the Petitioners' concern regarding the need to post hazard warnings during the refilling of a cask, the unloading procedure does include several notes and precautions to remind personnel that the fluid exiting the vent port may present radiological and thermal hazards.

In summary, many of the Petitioners' concerns pertain to potential problems with unloading spent fuel from a TN–40 cask if the fuel cladding has degraded during storage. While acknowledging that such concerns regarding the potential difficulties in retrieving failed fuel from dry storage casks are legitimate, the NRC staff has concluded that licensees need not be required to incorporate specific guidance into the normal unloading procedure to address this unlikely situation. On the basis of its review of the information provided by the Petitioners and its reviews of the licensee's procedure for unloading TN–40 casks at Prairie Island, the NRC staff has not identified violations of 10 CFR 72.122(l) or other regulatory requirements pertaining to the content or quality of the licensee's unloading procedure.

Item 2: Suspend Materials License No. SNM–2506

On the basis of the contention that the licensee's unloading procedure was inadequate, the Petitioners requested that Materials License No. SNM–2506 be suspended until such time as the significant issues in the unloading process have been resolved, the unloading process has been demonstrated, and an independent third-party review of the TN–40 unloading procedure has been conducted.[1]

As previously stated, the NRC staff has performed a review of the procedure for unloading a TN–40 cask at Prairie Island. The review, including verification that the licensee's unloading procedure was revised to address deficiencies identified by the NRC inspectors, is documented in NRC Inspection Report 50–282/95002; 50–306/95002; 72–10/95002(DRP). The review performed during the NRC inspection, subsequent evaluations performed by the NRC staff as part of the activities associated with the dry cask storage action plan and the review of this Petition, and the required control of the procedure in accordance with licensee programs developed in accordance with NRC regulations, facility licenses, and NRC-approved quality assurance programs provide reasonable confidence that the licensee could, if necessary, safely unload a TN–40 cask.

Regarding a third-party review, the NRC staff's concern about the quality of licensees' unloading procedures led it to include the issue in the dry cask storage action plan. The action plan provided a framework for the identification and resolution of various technical and administrative issues related to the use of dry storage casks. The previously mentioned actions taken by the NRC staff and licensees adequately resolved the identified issues pertaining to cask unloading procedures. In the specific case of the unloading procedure at Prairie Island, the licensee revised the procedure to address the problems identified by the staff during its inspection. On the basis of the actions it has already taken, the NRC staff does not believe that the situation warrants additional review of the licensee's unloading procedure by an independent third party.

Item 3: Allow Petitioners to Review Procedure, and for NRC to Hold Hearings and Allow Petitioners to Participate in the Proceedings

The licensee has provided the NRC with the unloading procedure, including Revision 2, dated November 8, 1996, for placement into the public record, and the Petitioners have been supplied with or have obtained copies of the procedure from the NRC's document control system. Accordingly, Petitioners have had the opportunity to review a recent revision of the unloading procedure. For the reasons previously discussed in this decision, the NRC staff sees no reason to undertake additional reviews of the procedure or to initiate a formal proceeding in which the Petitioners could participate. Although the NRC has decided not to initiate a hearing in response to this Petition, the Petitioners are encouraged to continue their interactions with the NRC staff regarding concerns or questions about the operation of the Prairie Island Nuclear Generating Plant or the Prairie Island ISFSI.

Item 4: Update the Technical Specifications for the Prairie Island ISFSI to Incorporate Mandatory Unloading Procedure Requirements

The TS for ISFSIs are required, by 10 CFR 72.44, to include requirements in the following categories:

(1) Functional and operating limits and monitoring instruments and limiting control settings;
(2) Limiting conditions;
(3) Surveillance requirements;
(4) Design features; and
(5) Administrative controls.

Although the TS for the Prairie Island ISFSI requires that TN–40 casks be unloaded if certain events or conditions defined in the TS are satisfied, the TS do not include specific requirements for the unloading process. The content of the TS for the Prairie Island ISFSI is typical in this respect since neither 10 CFR 72.44 nor the associated regulatory guidance documents specify that technical specifications should include special requirements for the unloading procedure.[2] Instead, the functional and operating limits, limiting conditions, administrative controls, and other requirements included in the TS for the Prairie Island ISFSI are intended to maintain the cask and stored spent fuel assemblies within the limits established for safe operation during storage within the ISFSI and activities such as loading and unloading of the casks. For example TS 2.3 limits the allowable lifting heights during movement of the cask

[1] The Petitioners request that Materials License No. SNM–2506 be suspended for cause in accordance with 10 CFR 50.100. Provisions for the modification, revocation, or suspension of the licenses for ISFSI facilities are contained in 10 CFR 72.60. The possible reasons for suspending licenses for ISFSIs in accordance with 10 CFR 72.60 are similar to the corresponding reasons for suspending licenses for production and utilization facilities in accordance with 10 CFR 50.100.

[2] Recent NRC staff guidance pertaining to the appropriate content of technical specifications is provided in NUREG–1536, ''Standard Review Plan for Dry Cask Storage Systems,'' published in January 1997. Similar guidance is provided by NRC Regulatory Guide 3.61, ''Standard Format and Content for a Topical Safety Analysis Report for a Spent Fuel Dry Storage Cask,'' issued in February 1989, and NRC Regulatory Guide 3.48, ''Standard Format and Content for the Safety Analysis Report for an Independent Spent Fuel Storage Installation (Dry Storage),'' issued in October 1981.

from the ISFSI and TS 3/4.2 requires a measurement of the boron concentration of the water in the spent fuel pool before water is introduced to the cask during the unloading process.

The absence of specific requirements in the TS to control the unloading process does not diminish the importance that the NRC staff places on this activity or the validity of the Petitioners' concerns. The NRC staff believes that other regulatory requirements provide an equivalent level of protection to the Petitioners' request to include specific requirements in the TS to control the unloading of a TN–40 cask. The administrative controls in the TS for the Prairie Island ISFSI require that the associated procedures, including the unloading procedure, be prepared, reviewed, and maintained in accordance with the requirements of the Prairie Island Nuclear Generating Plant Facility Operating Licenses and associated TS. In addition, under existing NRC requirements, the licensee must adequately implement procedures to control loading, maintaining, and unloading of dry storage casks (see 10 CFR 72.122, 10 CFR 72.150, and 10 CFR 72.152). For example, the NRC inspection documented in Inspection Report 50–282/95002; 50–306/95002; 72–10/95002(DRP) resulted in a Notice of Violation issued to the licensee because the licensee failed to satisfy the NRC's requirements in Criterion V of Appendix B to 10 CFR Part 50 by not having incorporated appropriate steps and precautions into the original procedure developed to control unloading of a TN–40 cask. As demonstrated by the example, no changes to the TS or the Safety Analysis Report (SAR) are needed to ensure that enforceable operating controls and limits are in place to address the unloading of a cask.

In regard to another concern raised by the Petitioners, the Prairie Island ISFSI SAR and other docketed correspondence do state that unloading a TN–40 cask would be performed using a procedure that is basically the reverse of the procedure used to load the cask. Although this statement, in a general sense, is true, the NRC staff agrees with the Petitioners that such statements may be misleading in that they oversimplify the description of the unloading activity. For this reason, the NRC staff included an item related to unloading procedures in its dry cask storage action plan to ensure that actual unloading procedures did not reflect such an oversimplified representation. The unloading procedure for the dry storage casks at Prairie Island was inspected by the NRC staff and, as previously discussed, was ultimately found to provide adequate guidance to control the unloading process.

IV. Conclusion

For the reasons described above, the NRC has determined that no adequate basis exists for granting the Petitioners' request for suspension of Northern States Power Company's license for dry cask storage of spent nuclear fuel at Prairie Island or for taking the other actions requested by the Petitioners. While acknowledging that the Petitioners' concerns regarding the potential difficulties in retrieving failed fuel from dry storage casks are legitimate, the NRC staff has concluded that licensees need not be required to incorporate specific guidance into the normal unloading procedure to address this unlikely situation.

A copy of this decision will be filed with the Secretary of the Commission for the Commission to review in accordance with 10 CFR 2.206(c).

As provided by this regulation, this decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 29th day of August 1997.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–23696 Filed 9–5–97; 8:45 am]

BILLING CODE 7690–01–P

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 3.70, ''Use of Fixed Neutron Absorbers at Fuels and Materials Facilities,'' provides guidance that is acceptable to the NRC staff on procedures for preventing criticality accidents by using fixed neutron absorbers in operations involving handling, storing, and transporting special nuclear fuels at fuels and materials facilities.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Single copies of regulatory guides, both active and draft guides, may be obtained free of charge by writing the Office of Administration, Attn: Printing, Graphics and Distribution Branch, USNRC, Washington, DC 20555–0001, or by fax at (301) 415–5272. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 9th day of August 1997.

For the Nuclear Regulatory Commission.

Malcolm R. Knapp,

Acting Director, Office of Nuclear Regulatory Research.

[FR Doc. 97–23698 Filed 9–5–97; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week of August 29, 1997

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–97–2862.
Date Filed: August 27, 1997.
Parties: Members of the International Air Transport Association.
Subject: PTC1 0049 dated August 26, 1997 r1–3, PTC1 0050 dated August 26, 1997 r4–7. Expedited TC1 Resolutions (Summaries attached.) Intended effective date: October 1, 1997.

Docket Number: OST–97–2861.
Date Filed: August 27, 1997.
Parties: Members of the International Air Transport Association.
Subject: PTC 0048 dated August 26, 1997 r1–4. Expedited TC1 Longhaul

Resos (Summary attached.) Intended effective date: October 1, 1997.

Docket Number: OST–97–2868.

Date Filed: August 29, 1997.

Parties: Members of the International Air Transport Association.

Subject: PAC/Reso/394 dated July 11, 1997. Finally Adopted Resolutions r1–19. Minutes—PAC/Meet/148 dated July 11, 1997. (Summary attached.) Intended effective date: November 1, 1997.

Paulette V. Twine,

Chief, Documentary Services.

[FR Doc. 97–23702 Filed 9–5–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Federal Transit Administration

Notification of Fiscal Year 1998 Certification Reviews of the Metropolitan Planning Process in Transportation Management Areas

AGENCIES: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Notice; request for comments.

SUMMARY: Under section 134 of title 23, United States Code (title 23, U.S.C.), and section 5303 of title 49, United States Code (title 49, U.S.C.), metropolitan planning organizations (MPOs), in cooperation with States, shall develop transportation plans and improvement programs for urbanized areas (urban areas of 50,000 or more in population). In a transportation management area (TMA), which is an urbanized area over 200,000 in population or other urbanized areas designated by the Secretary of Transportation (the Secretary), the Secretary is responsible for certifying, at least once every three years, that the metropolitan transportation planning process in the TMA is being carried out under applicable provisions of Federal law. This notice announces the metropolitan transportation planning processes that will be jointly reviewed by the FHWA and the FTA during Federal fiscal year (FY) 1998 (October 1, 1997 through September 30, 1998), as known at this time. Interested parties are invited to submit comments on the individual planning processes to be reviewed.

DATES: Comments on metropolitan transportation planning processes under review must be received within sixty (60) days of the scheduled site review in order to be considered during the certification review process. The dates for site visits in specific TMAs to be reviewed may be obtained by contacting the appropriate FHWA or FTA Regional office shown below.

ADDRESSES: Signed, written comments should identify the metropolitan area that the comments pertain to and should be submitted to the appropriate FHWA or the FTA regional office identified below.

FOR FURTHER INFORMATION CONTACT: For FHWA: Mr. Sheldon Edner, FHWA Metropolitan Planning Division (HEP–20), 202–366–4066 or Mr. Reid Alsop, FHWA Office of the Chief Counsel (HCC–31), 202–366–1371. For the FTA: Mr. Charles Goodman, FTA Metropolitan Planning Division (TPL–12), 202–366–1944 or Mr. Scott Biehl, FTA Office of the Chief Counsel (TCC–30), 202–366–4063. Both agencies are located at 400 Seventh Street, SW., Washington, DC 20590. Office hours for the FHWA are from 7:45 a.m. to 4:15 p.m., e.t., and for the FTA are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Section 134 of title 23, U.S.C. and section 5303 of title 49, U.S.C. require a continuing, comprehensive, and coordinated transportation planning process in urbanized areas over 50,000 in population. In accordance with these statutes, the Secretary is responsible for certifying, at least once every three years, that the metropolitan planning processes in TMAs are being carried out under applicable provisions of Federal law. These requirements are included in the joint FHWA and FTA metropolitan transportation planning regulation (at 23 CFR part 450, subpart C and 49 CFR part 613, subpart A) which was published on October 28, 1993 (58 FR 58040). Under the regulation, the FHWA and the FTA will jointly review and evaluate the planning process in each TMA as the basis for the certification by the Secretary.

Public Involvement in Certification Process

The FHWA and the FTA are soliciting public comment on the metropolitan transportation planning processes in TMAs that will be reviewed during FY 1998. Both agencies are particularly interested in receiving information regarding the strengths and weaknesses of various components of the planning processes identified at 23 CFR part 450, subpart C, Metropolitan Transportation Planning and Programming. Additionally, the views of local officials and the public are welcomed regarding the overall effectiveness of the planning process in making transportation investment decisions.

Schedule of FY 1998 Certification Reviews

The specific dates for site visits for the TMAs to be reviewed during FY 1998 may be obtained by contacting the appropriate FHWA or FTA regional office at the telephone numbers or addresses shown below. Parties interested in providing comments on the metropolitan transportation planning processes for the identified areas should submit them to either the FHWA or the FTA field office identified for the specific TMA that the comments pertain to. All comments should clearly identify the metropolitan area that the comments address and should be submitted within 60 days of the scheduled review in order to be considered during the certification review process. Where specific dates for a planned certification review have not yet been established, the appropriate FHWA or FTA field office will advise parties that request the information when the dates have been set.

The site visits are intended to provide an opportunity for the joint FHWA and FTA review team to solicit information from the MPO, the State transportation agency, and the transit agency(s) regarding the implementation of the planning process. In addition, the team will utilize various mechanisms for soliciting public and local official input. The relevant MPO is being asked to provide public notice, through its regular public notice procedures, of the review and the opportunity to provide public input to the review team. Public officials should contact the appropriate MPO to identify processes set up to solicit local government input.

The results of the certification reviews will be made public through the regular MPO public information process at a time to be set by the MPO policy board after receipt of the joint FHWA/FTA report.

The areas to be reviewed in FY 1998 and Regional office contacts and addresses are in Table 1.

TABLE 1.—METROPOLITAN TRANSPORTATION PLANNING PROCESSES SCHEDULED FOR REVIEW

FEDERAL REGION 1

Springfield, MA, Lawrence-Haverhill, MA, Hartford, CT, New Haven, CT
FHWA Contact: Alicia E. N. Nolan, 518–431–4224 ext. 236, Leo W. O'Brien Federal Building, Room 719, Clinton & North Pearl Streets, Albany, NY 12207.
FTA Contact: R. Max Vigil, 617–494–2055, 55 Broadway, Suite 920, Kendall Square, Cambridge, MA 02142–1093.

FEDERAL REGION 2

Albany, NY Buffalo, NY
FHWA Contact: Alicia E. N. Nolan, 518–431–4224 ext. 236, Leo W. O'Brien Federal Building, Room 719, Clinton & North Pearl Streets, Albany, NY 12207.
FTA Contact: Anthony Carr, 212–264–8162, 26 Federal Plaza, Suite 2940, New York, NY 10278–0194.

FEDERAL REGION 3

Lehigh Valley, PA, Scranton, PA, Philadelphia, PA, Hampton Roads, VA, Petersberg, VA, Baltimore, MD
FHWA Contact: Stephen K. Rapley, 410–962–3647, 10 S. Howard St., Suite 4000, Baltimore, MD 21201.
FTA Contact: Michele Destra, 215–656–6900, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124.

FEDERAL REGION 4

Montgomery, AL, Columbus, GA/AL, Atlanta, GA, Augusta, GA Ft. Lauderdale, FL, Miami, FL, Pensacola, FL, Jackson, MS, Charlotte, NC, Durham, NC, Raleigh, NC, Greenville, SC, Knoxville, TN
FHWA Contact: John S. Humeston, 404–562–3667, 61 Forsyth St., SW, Suite 17T26, Atlanta, GA 30303–3104.
FTA Contact: Roger Krahl, 404–562–3500, 61 Forsyth St., SW, Suite 17T50, Atlanta, GA 30303–3104.

FEDERAL REGION 5

Peoria, IL, South Bend, IN, Grand Rapids, MI, Cleveland, OH, Toledo, OH, Youngstown, OH, Milwaukee, WI, Minneapolis/St. Paul, MN
FHWA Contact: William M. Brownell, 708–283–3549, 19900 Governors Hwy, Suite 301, Olympia Fields, IL 60461.
FTA Contact: Paul Fish, 312–353–2789, 55 E. Monroe Street, Suite 1415, Chicago, IL 60603–5704.

FEDERAL REGION 6

Little Rock, AR, Shreveport, LA, Oklahoma City, OK, Austin, TX, El Paso, TX, Mc Allen, TX
FHWA Contact: Martin F. Kelly, 817–978–2994, 819 Taylor Street, Room 8A00, Fort Worth, Texas 76102.
FTA Contact: Peggy Crist, 817–860–9663, 524 East Lamar Blvd., Suite 175, Arlington, TX 76011–3900.

FEDERAL REGION 7

Davenport, IA, St. Louis, MO
FHWA Contact: John Cater, 816–276–2753, P.O. Box 419715, Kansas City, MO 64141–9715.
FTA Contact: Joan Roeseler, 816–523–0204, 6301 Rockhill Road, Suite 303, Kansas City, MO 64131–1117.

FEDERAL REGION 8

Denver, CO
FHWA Contact: Robin K. Smith, 303–969–6712 ext. 327, 555 Zang Street, Room 400, Lakewood, Colorado 80228.
FTA Contact: Don Cover, 303–844–3242, Columbine Place, Suite 650, Denver, CO 80202–5120.

FEDERAL REGION 9

Phoenix, AZ, Tucson, AZ, Los Angeles, CA, Fresno, CA, Stockton, CA
FHWA Contact: Bob O'Loughlin, 415–744–3823, 201 Mission Street, Suite 2100, San Francisco, CA 94105.
FTA Contact: Bob Hom, 415–744–3116, 201 Mission St., Suite 2210, San Francisco, CA 94105–1800.

FEDERAL REGION 10

Portland/Vancouver, OR/WA
FHWA Contact: Lisa Hanf, 503–326–2061, 222 SW Columbia—Suite 600, Portland, OR 97201.
FTA Contact: Theresa Morse, 206–220–7954, 3142 Federal Building, 915 Second Ave., Seattle, WA 98174.

Guidance and Responsibility

The FHWA and the FTA published guidance on the certification of planning processes on August 19, 1994, at 59 FR 42873. The guidance indicated that the primary responsibility for the certification process rests with the respective regional offices of the FHWA and the FTA. The preparatory work and analysis will be conducted by the appropriate FHWA division office, in cooperation with the FTA regional office, as a prelude to a site visit by Federal representatives to the metropolitan planning area to be reviewed. During the site visit, the Federal representatives will, in addition to meeting with representatives of the MPO, the State transportation agency, and the transit agency(s) serving the metropolitan planning area, also provide an opportunity to meet with elected officials of the principal local governments in the area, other local and regional agencies involved in the metropolitan transportation planning process, citizens, and other interested parties. The purpose of these meetings is to afford the officials, citizens, and other interested parties an opportunity to provide input to the certification decision in terms of the performance of the planning process.

As indicated above, the MPO, the State transportation agency, or the transit operator(s) may make arrangements for these meetings through their normal procedures. Other alternatives are acceptable based on arrangements between the Federal agencies and the appropriate transportation planning agencies. Officials, citizens, and other interested parties wishing to obtain information regarding the process of providing input should contact the MPOs for the metropolitan planning areas or appropriate FHWA or FTA regional office.

Authority: 23 U.S.C. 134 and 315; 49 U.S.C. 5305; 49 CFR 1.48.

Issued on: August 21, 1997.

Gloria J. Jeff,

Acting Administrator, Federal Highway Administration.

Authority: 23 U.S.C. 134 and 315; 49 U.S.C. 5305; 49 CFR 1.48.

Issued on: August 28, 1997.

Gordon J. Linton,

Administrator Federal Transit Administration.

[FR Doc. 97–23700 Filed 9–5–97; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. M–039]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before November 7, 1997.

FOR FURTHER INFORMATION CONTACT: Crawford Ellerbe, Office of Maritime Labor, Training and Safety, Maritime Administration, MAR–250, Room 7302, 400 Seventh Street, S.W., Washington, D.C. 20590. Telephone 202–366–5755 or FAX 202–493–2288. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: U.S. Merchant Marine Academy Application for Admission and Pre-Candidate Application.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0010.

Form Number: KP 3–4, and KP 2–65.

Expiration Date of Approval: March 31, 1998.

Summary of Collection of Information: The collection consists of form KP 3–4 (Pre-Candidate Application), and KP 2–65 (U.S. Merchant Marine Academy Application for Admission). These forms are completed by individuals wishing to be admitted as students to the U.S. Merchant Marine Academy and are reviewed by staff members of the Academy.

Need and Use of the Information: The collected information is necessary to select the best qualified candidates for the U.S. Merchant Marine Academy.

Description of Respondents: Individuals desiring to become students at the U.S. Merchant Marine Academy.

Annual Responses: 2,500.

Annual Burden: 5 hours.

Comments: Send all comments regarding this information collection to Joel C. Richard, Department of Transportation, Maritime Administration, MAR–120, Room 7210, 400 Seventh Street, S.W., Washington, D.C. 20590. Send comments regarding whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected.

By Order of the Maritime Administrator.

Dated: September 3, 1997.

Joel C. Richard,

Secretary.

[FR Doc. 97–23723 Filed 9–5–97; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and corresponding burden, invites the general public and other Federal agencies to comment on a proposed revision to an existing information collection, as required by the Paperwork Reduction Act of 1995. The OCC is soliciting comment concerning a proposed revision to an information collection titled Examination Questionnaire.

DATES: Written comments should be submitted November 7, 1997.

ADDRESSES: Direct all written comments to the Communications Division, Attention: 1557–0199, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. In addition, comments may be sent by facsimile transmission to (202) 874–5274, or by electronic mail to REGS.COMMENTS@OCC.TREAS.GOV.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the collection may be obtained by contacting Jessie Gates, (202) 874–5090, Legislative and Regulatory Activities Division (1557–0199), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Title: Examination Questionnaire.

OMB Number: 1557–0199.

Form Number: CC–2000–01(Rev) and CC–2000–02.

Abstract: This notice covers a proposed revision of a currently approved collection of information titled Examination Questionnaire. Completed examination questionnaires provide the OCC with information needed to properly evaluate the effectiveness of the examination process and agency communications. The OCC will use the information to identify problems or trends that may impair the effectiveness of the examination process, to identify ways to improve its service to the banking industry, and to analyze staff and training needs.

The OCC has developed two versions of the questionnaire: one for Community and Mid-size Banks, and one for Large Banks. Community and Mid-size Banks will receive the questionnaire as part of each examination. Large Banks will be invited to provide comments annually.

Type of Review: Revision.

Affected Public: Businesses or other for-profit.

Number of Respondents: 2,800.

Total Annual Responses: 2,660.

Frequency of Response: On occasion.

Total Annual Burden: 665 hours.

Comments

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(2) The accuracy of the agency's estimate of the burden of the collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 20, 1997.

Mark J. Tenhundfeld,

Assistant Director, Legislative & Regulatory Activities Division.

[FR Doc. 97–23724 Filed 9–5–97; 8:45 am]

BILLING CODE 4810–33–P

Corrections

Federal Register

Vol. 62, No. 173

Monday, September 8, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–460–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

Correction

In notice document 97–23155 appearing on page 46250 in the issue of Tuesday, September 2, 1997, the docket number is corrected to read as set forth above.

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5884–5]

Availability of Guidance for Utilization of Small, Minority and Women's Business Enterprises in Procurement Under Assistance Agreements

Correction

In notice document 97–22946 appearing on page 45645 in the issue of Thursday, August 28, 1997, make the following correction:

On page 45645, in the third column, in the **FOR FURTHER INFORMATION CONTACT** section, in the sixth line, ''(703) 305-5030.'' should read ''(703) 305-5023.''.

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[FCC 97–163]

Implementation of Section 254(k) of the Communications Act of 1934, as Amended

Correction

In rule document 97–22937 beginning on page 45587 in the issue of Thursday, August 28, 1997, make the following correction:

On page 45587, in the second column, in the **EFFECTIVE DATE:** section, ''September 29, 1997'' should read ''August 28, 1997''.

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 416

[BPD–878–FC]

RIN 0938–AH55

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1998 Rates

Correction

In rule document 97–22890 beginning on page 45966 in the issue of Friday, August 29, 1997, make the following correction:

On page 46032, in the first column, in the part heading, ''PART 416'' should read ''PART 413''.

BILLING CODE 1505–01–D

federal register

Monday
September 8, 1997

Part II

Department of Commerce

National Institute of Standards and Technology

15 CFR Part 280

Procedures for Implementation of the Fastener Quality Act; Proposed Rule

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

15 CFR Part 280

[Docket No: 970724177–7177–01]

Procedures for Implementation of the Fastener Quality Act

AGENCY: National Institute of Standards and Technology, United States Department of Commerce.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Director of the National Institute of Standards and Technology (NIST), United States Department of Commerce, and the Under Secretary of the Bureau of Export Administration, United States Department of Commerce, request comments on proposed changes to the regulations found at 15 CFR part 280 pertaining to implementation of the Fastener Quality Act (the Act). The proposed changes allow accreditation of in-process inspection activities of qualifying statistical process control manufacturing facilities, address the issue of passing laboratory inspection and testing reports along the supply chain to the fastener manufacturer, address the issue of significant alteration by removal of manufacturer or grade identification markings for decorative purposes at the customer's request, address the issue of grandfathering fasteners, and revise definitions and related sections for clarity and to correct editorial error. The proposed changes will facilitate the implementation of the Act and regulations and will better accommodate modern industry practices by incorporating them into the Fastener Quality Act certification process.

DATES: Comments must be received no later than November 7, 1997.

ADDRESSES: Comments on the proposed revisions must be submitted to: Dr. Subhas G. Malghan, FQA Program Manager, Technology Services, National Institute of Standards and Technology, Building 820, Room 306, Gaithersburg, MD 20899, telephone number (301) 975–5120.

FOR FURTHER INFORMATION CONTACT: Dr. Subhas G. Malghan, FQA Program Manager, Technology Services, National Institute of Standards and Technology, Building 820, Room 306, Gaithersburg, MD 20899, telephone number (301) 975–5120.

SUPPLEMENTARY INFORMATION:

Background

The Fastener Quality Act (the Act) protects the public safety by: (1) Requiring that certain fasteners which are sold in commerce conform to the specifications to which they are represented to be manufactured, (2) providing for accreditation of laboratories engaged in fastener testing; and (3) requiring inspection, testing and certification, in accordance with standardized methods, of fasteners covered by the Act.

The Secretary of Commerce, acting through the Director of the National Institute of Standards and Technology (NIST), published final implementing regulations on September 26, 1996, establishing procedures, under which: (1) Laboratories in compliance with the Act may be listed; (2) laboratories may apply to NIST for accreditation; (3) private laboratory accreditation entities (bodies) may apply to NIST for approval to accredit laboratories; and (4) foreign laboratories accredited by their governments or by organizations recognized by the NIST Director under section 6(a)(1)(C) of the Act can be deemed to satisfy the laboratory accreditation requirements of the Act. The regulation also established, within the Patent and Trademark Office (PTO), a recordation system to identify the manufacturers or distributors of covered fasteners to ensure that the fasteners may be traced to their manufacturers or private label distributors. In addition, the regulations contained provisions on testing and certification of fasteners, sale of fasteners subsequent to manufacture, record keeping, applicability of the Act, enforcement, civil penalties, and hearing and appeal procedures.

Those regulations became effective on November 25, 1996, and were to apply to fasteners manufactured on or after May 27, 1997, the ''implementation date''. On April 18, 1997, pursuant to Section 15 of the Fastener Quality Act, NIST announced a one year extension in the implementation date of the regulations on grounds that there were an insufficient number of accredited laboratories to conduct the volume of inspection and testing required by the Act and regulations (62 Fed. Reg. 19041 (1997)). NIST believes that it will have completed the approval/accreditation of a sufficient number of accreditation bodies/laboratories to implement the Act by May 26, 1998.

Following issuance of the final regulations on September 26, 1996, the automobile industry approached the Department and expressed its concerns that the Act and implementing regulations do not recognize the use of modern manufacturing methods using prevention-based quality assurance systems employing statistical process controls (SPC). During the period of September 1996 to January 1997, the Department worked with the automobile industry (domestic and foreign) to develop further information about the extent of the problem. On February 4, 1997, a Public Workshop was held at the National Institute of Standards and Technology (NIST) to solicit information from the automobile, aerospace, construction, and fastener industries on the use of prevention-based quality assurance systems employing SPC in the manufacture of fasteners. On the basis of this meeting and many discussions with the concerned industries, the Department is proposing amendments to the implementing regulations that will recognize the use of prevention-based quality assurance systems under the Act and regulations. These amendments are discussed in detail in Part 1 of this proposed rule.

In addition to the above, the Department collaborated with industry in conducting eleven Fastener Quality Act Workshops in various parts of the United States, Europe, and Asia during the period from September 1996 to February 1997. The workshops attracted over 2,500 industry participants who asked hundreds of questions of the Department on the Act and regulations. As a result of those workshops and the great deal of information provided by the industry participants on the impact of the Act and regulations, the Department assembled evidence of need for several possible amendments to the regulations. These amendments are discussed in detail in Part 2 of this proposed rule.

Part 1: Summary of Proposed Amendments on Statistical Process Control

Background & Definition of the Issue

Ford, General Motors, and Chrysler Corporation established a Supplier Quality Requirements Task Force in the 1980s to develop quality system requirements (QS–9000) for their suppliers of materials and parts. Initially, each company developed its own expectations for supplier quality systems. In 1988, emphasis was placed on standardizing the requirements, and in 1992 this was largely accomplished. The goal of QS–9000 is the development of fundamental quality assurance systems (QAS) that provide for continuous improvement, emphasizing

defect prevention and the reduction in variation and waste in the supply chain.

QS–9000 employs statistical process control (SPC) in ensuring the quality of parts. Suppliers must demonstrate process capabilities which will yield a given quantity of parts with a minimum specified number of defects. Depending upon the fastener type and auto maker, the maximum allowable defective Parts Per Million (PPM) ranges between 15 and 125 PPM.

The heart of the QS–9000 system is the Control Plan which each company must develop and have approved by Ford, GM, or Chrysler as part of their adherence to QS–9000. The Control Plan is a comprehensive documentation of product/process characteristics, process controls, tests, and measurement systems that will occur during mass production. It will normally also specify how much in-process or final testing and inspection will be carried out by the supplier company. This determination is based upon demonstrated process capabilities, experience with the supplier, etc. QS–9000 implies that, through continuous improvement, a supplier company may ultimately be able to demonstrate a capability of producing millions of parts with zero defects by continuously monitoring and controlling the production process rather than relying upon the inspection and testing of the physical attributes of the manufactured product. Given the above, the automotive industry asserts that the Fastener Quality Act's reliance on lot control and final inspection of fasteners does not recognize the reality of modern mass production using statistical process control.

As present, the FQA and implementing regulations, rely on the use of accredited laboratories for inspection, testing, and certification of fasteners to applicable standards and specifications. Sections 5 of the Act and 280.5 of the regulations are very specific that a manufacturer of a lot of fasteners shall cause a representative sample of the fasteners in the lot to be inspected and tested by an accredited laboratory, and a test report must be produced which indicates that the fasteners tested are in conformance with all of the provisions of the standards and specifications used by the manufacturer in the production of the fasteners. The end result, and the cornerstone on which the Act is based, is that every lot of fasteners is certified by the manufacturer as conforming to a given standard and specification, and the paperwork relating to such certification (e.g., certificates of conformance and test reports) is maintained on file and available at the purchaser's request.

In the case of fastener manufacturers supplying the automobile industry, Ford, GM, and Chrysler, as major end users of the fasteners, have established QS–9000 as a means of achieving the same end. Their suppliers are required to: (1) Establish a control plan under which they will produce fasteners to the auto industries standards and specifications; (2) submit evidence in the form of production data that they can produce fasteners under a specified defect rate; and (3) perform continuous monitoring and tests to maintain control of the production process and to assure that the final product will be in conformance with fastener standards and specifications. The difference between the previously published regulation and the QS–9000 approach is that the regulation assures end users that fasteners meet standards and specifications by relying upon the inspection and testing of fasteners by accredited laboratories. Under QS–9000, the end users (Ford, GM, and Chrysler) recognize the fastener manufacturer's entire production process as a means of ensuring conformance to these end users standards and specifications. Consequently, ensuring adherence to standards and specifications, is equivalent under the QS–9000 approach to end product testing. However, the automobile industry believes that reliance on QS–9000, which is based upon continuous monitoring and improvement of the manufacturing process, is more efficient and cost effective than traditional manufacturing regimens of final inspection and testing of the end product, and represents the direction in which manufacturing technology is evolving in this country and abroad.

Parallels to QS–9000 are being used in other countries including Japan, and in other industries. For example, the U.S. aerospace industry employs statistical process control in much the same way that the automobile industry does. That is, major end users of aerospace fasteners are beginning to require their fastener suppliers to comply with comparable quality assurance programs as a condition to supplying them.

When the Fastener Quality Act was signed into law in 1990, QS–9000 was in the early stages of development, and its full implication for the industry was not well known. There is some evidence in the history of the Act that Congress was informed of the need to consider OEM based quality assurance systems for procuring fasteners (e.g., Statement of Donald Keil, Assistant Director of Quality, Caterpillar Inc., during the Hearing on H.R. 3000 before the Committee on Commerce, Science, and Transportation, United States Senate, S.Hrg. 101–509, November 20, 1989). However, the Act did not directly recognize major end user quality system requirements for satisfying testing, inspecting and certification provisions under section 5 of the Act. Similarly, in August 1992, NIST published draft implementing regulations for public comment. As a result of the public comment process, letters were received from General Motors and Nissan Corporation calling attention to quality assurance programs they had in place to qualify fastener suppliers; they indicated that the Act would require some redundant testing. However, no recommendations were made at that time to permit recognition of QS–9000 type systems.

The discussions about the use of statistical process control within the automobile industry, did not lead to specific recommendations for treating SPC under the Act or regulations. However, the issue was raised at a meeting of the Fastener Advisory Committee in May 1996. At that meeting a member of the Advisory Committee raised the issue of problems that fastener suppliers would face in meeting the inspection, testing, and certification requirements of the Act and regulations. Accordingly, a proposal was introduced to exempt from the regulations the automotive fasteners produced to the standards of a major end user such as GM, Ford, and Chrysler. Since May of 1996, the Department has had many discussions of these issues with representatives of the automobile industry (U.S. and foreign) and with fastener manufacturers who supply such industries. On February 4, 1997, NIST held an open meeting to solicit industry views on the use of SPC in the manufacture of fasteners under the Act. The purpose of the meeting, attended by some 150 industry representatives and Department officials, was to determine the impact that inspection, testing, and certification requirements of the Act and regulations would have on fastener manufacturers who use SPC and to identify ways in which the requirements of the Act and regulations might be met by prevention-based QAS using SPC.

A report of the meeting was published in April 1997, NISTIR 6001—''Summary of Public Meeting, Use of Quality Assurance Systems in the Fastener Industry,'' and may be obtained from NIST. The report included proposed regulatory language being considered at that time by the Department for resolving the issues identified during the meeting. As part of the report, the

Department invited industry to provide input on the suggested regulatory approach. Some 30 letters were received by NIST, commenting on the report and the proposed regulatory language. The vast majority of these focused on the SPC issue, suggesting solutions ranging from exempting the automobile industry from the Act and regulations to incorporating SPC in the regulatory scheme. Many proposed specific amendments to the regulations that would incorporate SPC. The Department appreciates the spirit with which the automobile industry has responded and had considered all comments received. It is believed that the amendments proposed in this notice best achieve the incorporation of SPC in the regulatory scheme.

The Proposed Solution to the QAS/SPC Issue

The Director of NIST is today proposing that a fastener manufacturing facility employing a fastener quality assurance system (QAS) as defined in the regulations may be deemed to be an accredited laboratory for purposes of the Act and regulations if such facility has been formally registered by a NIST-recognized quality systems registrar.

NIST wishes to make it clear that recognition of facilities that employ fastener QAS as accredited laboratories within the meaning of the Act and regulations is an alternative to final inspection and testing of fasteners that is still carried out by many fastener manufacturers. Both approaches to meeting the requirements of the Act and regulations are equally valid. Adoption of these proposed amendments will enable the use of QAS in fastener manufacturing in a manner consistent with the requirements of the Act by ensuring that every lot of fasteners is sampled and examined to ensure conformance with applicable standards and specifications. Manufacturers must follow the requirements of the fastener standards and specifications, as published by a consensus standards organization or a major end user. For example, a fastener manufacturer cannot unilaterally decide to replace final inspection and testing with a QAS unless the designated standards or specifications provide for this as an alternative to final inspection and testing.

A definition of ''Fastener Quality Assurance System (QAS)'' is proposed as part of the amendments. In developing the QAS definition, NIST feels it is important to provide guidance to the industry as to the minimum elements a fastener manufacturer's QAS should contain to be eligible for recognition as an accredited laboratory within the meaning of the Act and regulations. These elements have been included in the definition.

The Department believes that the proposed amendments resolve industry's concerns that the Act and regulations should recognize the use of modern manufacturing methods. Proposed procedures for applying for NIST/ABEP recognition of registrar accreditation bodies that accredit quality systems registrars, which are based upon international standards, are included as subparts I through L.

Part 2: Summary of All Other Proposed Amendments

Since September 1996, eleven Fastener Quality Act Workshops have been conducted in seven cities in the U.S. (Chicago [2], Cleveland, Columbus, Houston, Newark, Atlanta, and Los Angeles), and in Taiwan and the U.K. (two were held in London). Over 2,500 industry participants attended the workshops. These included fastener manufacturers, distributors, and importers, and representatives of industries such as automotive, aerospace, construction, heavy machinery, etc., that purchase and use high strength fasteners. At the workshops, representatives of BXA, NIST, and the Patent and Trademark Office (PTO) presented information on the Act and implementing regulations. In addition, members of the Public Law Task Force (PLTF), a nine member industry committee representing fastener manufacturers, distributors, and importers, provided an industry perspective on the impact of the Act and regulations. Over the course of the workshops some 450 questions from the participants were documented by the Department, with the understanding that answers would be published as interpretive opinions of the Department as soon as practicable.

During the course of the workshops a great deal of practical information was exchanged among the participants on the impact of the Act and regulations on daily commerce in fasteners. This information has been analyzed by the Department and translated into proposed amendments which are discussed below. Comments from the public are requested on these proposed amendments.

1. Significant Alterations of Fasteners

Under section 280.2 of the regulations, ''significantly alter'' means to alter a fastener in a manner which could weaken or otherwise materially affect the performance or capabilities of the fastener as it was originally manufactured, grade or property class marked, tested or represented. The term does not include the application of adhesives or sealants, locking elements, provisions for lock wires, coatings and platings of parts having a specified Rockwell C hardness of less than 32, or cutting off of fasteners. In the reference to Rockwell C hardness, an editorial error was made in the September 26, 1996 issuance of the final regulations in that the word ''minimum'' was to appear before the word ''specified'' so that it reads ''minimum specified Rockwell C hardness of less than 32 * * *'' in section 280.2 and in section 280.11 (b) of the regulations. The Department proposes amendments to these sections to correct this error.

2. Removal of Head Markings

Questions were raised during each of the workshops about specialty fasteners and the practice of shaving or polishing of fastener heads to remove all markings for decorative purposes. The cases mentioned were of manufacturers of motorcycles and pianos which frequently special order fasteners that will be subject to the Act and regulations without any head markings on them because they do not want the markings to show in the final product. However, the Department also recently received a letter from the Association of International Automobile Manufacturers (AIAM) indicating that some of its members produce company standards which may reference consensus standards for certain requirements for fasteners but which do not reference requirements for including the manufacturer's insignia on the head of the fastener. AIAM asserts that such practice is consistent with the Act and regulations and that the manufacturer of the fastener may supply the fasteners to these automobile manufacturers without any head markings. The issue is whether a fastener manufacturer is in violation of the Act and regulations if he/she fills such an order from a customer. Put another way, how much flexibility does a customer have in requesting that covered fasteners be supplied to them without the required headmarkings if they are going to use the fasteners in their products and possibly even sell them for repair and replacement parts?

The Department has studied this issue and is proposing to amend the regulations by adding a new section 280.11(c) to allow a fastener user or purchaser to special order fasteners covered under the Act and regulations without the required manufacturer or grade identification markings under certain conditions. The existing sections

280.11(c) and (d) are proposed to be redesignated as sections 280.11(d) and (e). The new section 280.11(c) requires that: (1) The fasteners be manufactured to an OEM or major end-user standard which does not require such markings; or (2) the customer request in writing that manufacturer or grade identification markings be removed for decorative purposes and certifies that such fasteners will not be held out or sold as meeting the requirements of a consensus standard which requires manufacturer or grade identification markings.

3. Supplying Originals vs Copies of Test Reports

In all of the workshops, especially those held in Asia and in Europe, concerns were expressed about the potential paperwork burden on raw materials manufacturers in meeting the requirements of section 280.15 of the regulations. Raw materials manufacturers (domestic and foreign) assert that the requirement for ''originally signed'' test reports to accompany shipments of raw materials and finished fasteners will be a significant burden to them.

In the case of raw material suppliers, the raw material purchased by the fastener manufacturer typically goes through as many as four processors, each performing a different operation that does not affect the steel's chemical characteristics. In addition, distributors may be involved in these transactions. Under one scenario, the following successive processors/distributors transform the ingot/bloom to fasteners:

Steel mill or melter or ingot producer ⇨rod producer⇨ wire or rod producer⇨ distributor⇨ fastener producer

Current industry practice is that the steel mill is the primary source at which the chemical characteristic certification is produced and passed down to the first processor or distributor to whom it sells the steel. All other subsequent processors, distributors and fastener manufacturers in the above mentioned chain, produce their own certification based on the results contained in the original chemical certificate of the steel mill. This certificate consists of relevant information such as the name of steel melter, steel mill identification, heat number, and chemical analysis data. Therefore, current industry practice is for everyone in the chain except the original steel melter to reference the original chemical certification data instead of passing on a certified copy of the chemical characteristics certificate down the chain to the fastener manufacturer. The primary reason for this practice is that from a single heat number of steel, thousands of lots of fasteners can be manufactured by an unknown number of fastener manufacturers. Moreover, the steel mill would not know in advance the name of fastener manufacturers who would purchase steel from a given heat number or the number of certificates required from a heat number of the steel.

To comply with the Act and current regulations, either copies of the laboratory report of chemical characteristics, certified by the laboratory, must be passed down the supply chain ''through the metal manufacturer'' or the fastener manufacturer must be responsible for contacting the laboratory that performed the chemical tests to obtain a certified copy directly. Since the metal manufacturers do not know how many fastener manufacturers will acquire part of a particular heat or coil, they do not know how many certified copies to request from the laboratory at the time they obtain the original test report. The fastener manufacturers feel it is burdensome for them to obtain certified copies from the laboratories, and it is extremely burdensome for the laboratories to have to retrieve reports and create certified copies whenever requested by fastener manufacturers.

A solution that works for both fasteners of foreign origin and domestically-produced fasteners is to allow copies of laboratory testing reports of chemical characteristics only to be certified by either the laboratory or the metal manufacturer. The definition of ''original laboratory testing report'' in section 280.2 is proposed to be amended to allow metal manufacturers, as well as laboratories, to certify copies of laboratory testing reports of chemical characteristics.

4. Laboratory Test Reports

Several steel producers raised another issue with respect to the chemistry certificate during the workshops. It deals with a discrepancy in the language used in reporting of alternative chemical characteristics, as follows:

1. Section 5(d)(3)of the Act requires reporting the, ''chemical characteristics of such coil or heat number;''
2. Section 280.6(b)(5)(ii) of the regulations requires, ''test results for each sample;'' and
3. Section 280.15(b) returns to the requirement for reporting, ''chemical characteristics of such coil or heat number.''

The chemical characteristics data required to be reported in section 280.6(b)(5)(ii) is not the same as the other two sections mentioned above. Currently, steel manufacturers use test reporting methods that conform to section 5(d) of the Act, and section 280.15 of the regulations. The reporting of the ''heat number analysis'' is well defined in existing steel making practices and consensus standards. A ''heat number analysis'' consists of derived values for each element from one or more samples taken from either molten metal or solid steel. Overall, this method best describes the chemical characteristics of the steel.

If section 280.6(b)(5)(ii) is not changed to make it in agreement with other sections of the Act and regulations, several problems may occur:

1. Steel suppliers will be forced to use their best judgement in interpreting the Act, and proper methods of reporting of chemical analysis;
2. Variations in interpretations will lead to serious disputes between steel suppliers and their customers; and
3. Steel suppliers will be forced to change reporting methods to those described in section 280.6(b)(5)(ii), which will result in unnecessary costs to the industry.

Accordingly, the Department is proposing for public comment an amendment to section 280.6(b), which is proposed to be redesignated as section 280.6(c), which requires the reporting of test results for such coil or heat number chemical analysis.

5. New Definition of ''Lot Number''

It was pointed out during the workshops that ''lot number'' as defined in section 280.2 of the definitions means a number assigned to the lot by a manufacturer, and that it is fairly common for distributors and importers to assign their own unique lot number to fasteners in addition to the number assigned by the manufacturer. Further, section 280.11 of the regulations dealing with significant alterations requires that significant alterors assign their lot numbers to significantly altered fasteners. Accordingly, the Department is proposing to amend the definition of lot number found in section 280.2 to include a number assigned by a manufacturer, importer, distributor, or significant alterer to the lot. The amendment further stipulates that a lot number assigned by an importer, distributor, or significant alterer shall be traceable to a manufacturer's single, unique lot number.

6. Grandfathered Fasteners Issue

Section 15 of the Act provides that the Act is applicable only to fasteners manufactured after the implementation date of the Act. Section 280.12(c) of the

regulations further states that nothing in the Act or in the regulations prohibits selling finished fasteners manufactured prior to the implementation date of the Act, or representing that such fasteners meet standards and specifications of a consensus standards organization or a government agency. Additionally, this section of the regulations states that fasteners manufactured prior to the implementation date of the Act may not be represented as being in conformance with the Act or the regulations.

It is clear that Congress, in enacting section 15 of the Act, intended only to cover those fasteners produced after the implementation date of the Act so as not to impose a hardship on the industry by having existing product retested and certified. However, representatives of the fastener industry met in January 1997 with representatives of NIST and proposed that section 280.12(c) of the regulations be amended by moving the last sentence of the section, which states that fasteners manufactured prior to the implementation date of the Act may not be represented as being in conformance with the Act or the regulations, to section 280.602, Violations. This sentence is moved to the violations section because as a prohibition on certain specific conduct, it more appropriately belongs there.

Request for Public Comment: Persons interested in commenting on the proposed regulations should submit their comments in writing to the above address. All comments received in response to this notice will become part of the public record and will be available for inspection and copying at the Department of Commerce Central Reference and Records Inspection facility, room 6228, Hoover Building, Washington, DC 20230.

Additional Information

Executive Order 12866

This rule has been determined not to be significant under section 3(f) of Executive Order 12866.

Executive Order 12612

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Regulatory Flexibility Act

Regulatory Flexibility Analysis of Procedures for Implementation of the Fastener Quality Act

This proposed rule has been determined to be not significant for the purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy, the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The proposed rule includes changes that allow accreditation of in-process inspection activities of qualifying statistical process control (SPC) manufacturing facilities, address the issue of passing laboratory inspection and testing reports along the supply chain to the fastener manufacturer, address the issue of significant alteration by removal of manufacturer or grade identification markings for decorative purposes at the customer's request, address the issue of grandfathering fasteners, and revise definitions and related sections for clarity and to correct editorial error. The proposed changes will facilitate the implementation of the Fastener Quality Act (FQA) and regulations and will better accommodate modern industry practices by incorporating them into the FQA certification process. However, of all these proposed changes, the major change covered here is that which allows accreditation of in-process inspection activities of qualifying statistical process control manufacturing facilities. The remaining changes are relevant to the existing regulations that became effective on November 25, 1996, and their impact on the fastener industry already has been presented. Therefore, in this analysis, the issues relevant to manufacturing of fasteners using only SPC or quality assurance systems (QAS) are covered.

As presently constructed, the FQA and implementing regulations, rely on the use of accredited laboratories for inspection, testing, and certification of fasteners to applicable standards and specifications. Sections 5 of the Act and 280.5 of the regulations are very specific that a manufacturer of a lot of fasteners shall cause to be inspected and tested a representative sample of the fasteners in the lot by an accredited laboratory, and a test report must be produced which indicates that the fasteners tested are in conformance with all of the provisions of the standards and specifications used by the manufacturer in the production of fasteners. The end result, and the cornerstone on which the law is based, is that every lot of fasteners is certified by the manufacturer as conforming to a given standard and specification, and the paperwork relating to such certification (e.g., a certificate of conformance and test reports) is maintained on file and available at the purchaser's request.

In the case of fastener manufacturers supplying the automobile industry, the industry has established QS–9000 as a means of achieving the same end. That is, they qualify their suppliers by requiring them to: (1) Establish a control plan under which they will produce fasteners to their standards and specifications; (2) submit evidence in the form of production data that they can produce fasteners under a specified defect rate; and (3) perform continuous monitoring and tests of the production process to maintain control of the process and to assure that the final product will be in conformance with fastener standards and specifications. The difference between the regulation as it exists and the QS–9000 approach is that the regulation assures end users that fasteners meet standards and specifications by relying upon the inspection and testing of fasteners by accredited laboratories. Under QS–9000, the end users (Ford, GM, and Chrysler) recognize the fastener manufacturer's entire production process as a means of assuring conformance to their standards and specifications. The end result, that of assuring adherence to standards and specifications, is the same under the QS–9000 approach as with end product testing. However, the automobile industry believes that reliance on QS–9000, which is based upon continuous monitoring and improvement of the manufacturing process, is more efficient and cost effective than traditional manufacturing regimens of final inspection and testing of the end product, and represents the direction in which manufacturing technology is evolving in this country and abroad.

To the extent the FQA permits flexibility in developing these draft regulations, the Department has sought advice from the fastener and end-user industries (automotive, aerospace, etc.) to maximize the cost-effectiveness of the proposed rule. Those recommendations presented by the industry at the February 4, 1997 meeting and at site visits to industry have been incorporated in this proposed rule to assist industry in implementing this rule, if accepted, in a cost-effective manner.

It is difficult to estimate the total number of fastener manufacturers in the U.S. because there are too many that do not belong to any professional organization and operate very small shops. Some estimate this number to be in excess of one thousand. However, based on an estimate from the Industrial Fastener Institute, 80% of the U.S. fastener production capacity is served

by approximately 120 major manufacturers. Of these, nearly 50%, or 60 manufacturers, supplying fasteners to the auto and aerospace industries could be using the QAS included in this rule. A large majority of these 60 manufacturers could be classified as small businesses employing less than 750 employees (as defined at 13 CFR 121.201).

We believe the overall effect on the fastener industry of adopting this proposed rule will be highly beneficial. No negative effects are envisioned at this time. In fact, as we look into the future, we believe market forces (improved quality and decreased cost) will push the remaining manufacturers not currently using QAS to adopt the QAS standards. This proposed rule, if adopted, would allow these manufacturers to do so without incurring additional costs to comply with the FQA. We believe this proposed rule, if adopted, would benefit the industry in, at least, the following ways:

1. Ability to use modern manufacturing technology to conform with the law without a need to make any changes;
2. Ability to use just-in-time delivery and other advancements to avoid production delays and reduce inventory costs; and
3. Overall improvement in the fastener quality at a lower production cost.

Registration cost per facility will vary with scope (the number of procedures and products, the number of sampling locations, etc.) as in the case of laboratory accreditation. Based on the laboratory accreditation carried out by NVLAP during the past nine months, we estimate the annual cost of registration will run between $5,000 and $15,000 per facility which is the same as the cost of laboratory accreditation. Since most facilities are likely to adopt one of the approaches, this will not be an additional cost. Moreover, most facilities seeking registration have already obtained registration under either ISO–9000 or QS–9000. Therefore, additional cost savings may result because fastener manufacturers do not have to spend resources solely for conforming with the FQA.

It is not expected that any manufacturing facility practicing QAS will cease to operate; suffer a significant loss in gross revenue; or have increased compliance costs because of this proposed rule, if adopted.

We seek public comment providing data on impact for use in determining the appropriateness of this certification for purposes of a final rule. Moreover, within one to two years of the initial implementation period, if adopted, we should have sufficient data to assess impact for purposes of determining the necessity for review under 5 U.S.C. § 610(c).

The requirements for laboratory accreditation and registration of manufacturing facilities under this rule are in accordance with the established international standards, thus promoting uniformity in the evaluation process. The rule allows the fastener manufacturer and testing laboratories to decide which approach to choose for seeking accreditation.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. However, that requirement involves paperwork already being produced by fastener manufacturers. The only additional requirement is to prepare a synopsis of the testing and inspection results in the form of a test report. This requirement is proposed to facilitate enforcement actions of the Bureau Of Export Administration (BXA), which has the enforcement authority granted under the Fastener Quality Act.

As a result, no initial regulatory flexibility analysis has been prepared.

Paperwork Reduction Act

Notwithstanding any other provision of the Act, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection-of-information, subject to the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This proposed rule revises an existing collection of information subject to the requirements of the Paperwork Reduction Act that was previously approved by the Office of Management and Budget under the control number 0693–0015. The revision is applicable to persons requiring approval of the Accreditation Body Evaluation Program (ABEP) at NIST to register quality system registrars who would in turn register fastener manufacturing facilities.

The collection of information requirement is applicable to persons requiring approval of the Accreditation Body Evaluation Program (ABEP) at NIST to accredit quality system registrars who would register fastener manufacturing facilities. The public reporting burden per respondent for the collection of information contained in this rule is estimated to average 4 hours annually. This estimate includes the time for reviewing instructions, searching existing information, gathering and maintaining the information needed, and completing and reviewing the collection of information.

Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of NIST's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Comments should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503; and to NIST (Attn.: ABEP Program Manager, NIST, Building 820, Room 306, National Institute of Standards and Technology, Gaithersburg, MD 20899).

National Environmental Policy Act

This rule will not significantly affect the quality of the human environment. Therefore, an environmental assessment or Environmental Impact Statement is not required to be prepared under the National Environmental Policy Act of 1969.

List of Subjects in 15 CFR Part 280

Business and industry, Fastener industry, Imports.

Dated: August 13, 1997.

Robert E. Hebner,

Acting Director, National Institute of Standards and Technology.

Dated: August 21, 1997.

William A. Reinsch,

Under Secretary for Export Adminstration.

For reasons set forth in the preamble, it is proposed that Title 15 of the Code of Federal Regulations be amended as follows:

PART 280—FASTENER QUALITY

1. The authority for part 280 continues to read as follows:

Authority: Section 13 of the Fastener Quality Act (Pub.L. 101–592, as amended by Pub.L. 104–113).

2. Section 280.1 is amended by adding paragraph (d) to read as follows:

§ 280.1 Purpose/description of rule.

* * * * *

(d) Delegations of authority. The Secretary of Commerce has delegated authority to the Director, National Institute of Standards and Technology to promulgate regulations in this part under sections 5 through 8 of the Fastener Quality Act (15 U.S.C. 5404–5407). In addition, the Secretary of Commerce has delegated concurrent authority to the Under Secretary for Export Administration to amend the regulations issued under sections 5 through 7 of the Act, regarding enforcement. The Secretary of Commerce had also delegated concurrent authority to amend the regulations issued under section 8 of the Act, regarding recordal of insignias, to the Assistant Secretary and

Commissioner of Patents and Trademarks.

3. Section 280.2 is amended by revising the definitions for *accreditation, lot number, original laboratory testing report,* and *significantly alter* and adding the remaining definitions as set forth below:

§ 280.2 Definitions.

* * * * *

Accreditation for purposes of the Act and this part means accreditation of a testing laboratory or the registration of a fastener manufacturing facility employing a quality assurance system (a Facility).

* * * * *

Accreditor means a registrar accreditation body that meets the requirements of subpart K of this part, is recognized by NIST, and appears on the Accreditors List described in § 280.810(a).

* * * * *

Facility means a fastener manufacturing facility implementing a quality assurance system as defined in this part, that has been registered by a Registrar and appears on the Facilities List described in § 280.810(c).

* * * * *

Fastener Quality Assurance System (QAS). (1) *Fastener Quality Assurance System (QAS)* means a fastener manufacturing system that has as a stated goal the prevention of defects through continuous improvement, and which seeks to attain that goal by incorporating:

(i) Advanced quality planning;

(ii) Monitoring and control of the manufacturing process;

(iii) Process inspection embodied in a comprehensive and written control plan for product/process characteristics, process controls (including statistical process control), tests, and measurement systems that will occur during mass production; and

(iv) The creation, maintenance, and retention of electronic, photographic, or paper records, available for inspection during the periods required by section 10 of the Act and § 280.7 of this part, regarding the inspections, tests, and measurements required by or performed pursuant to the control plan.

(2) A Fastener Quality Assurance System contains the following elements at a minimum:

(i) A documented quality management system that satisfies the requirements of ISO–9001 ''Quality Systems—Model for quality assurance in design, development, production, installation and servicing,'' ISO–9002 ''Quality Systems—Model for quality assurance in production, installation and servicing,'' or other quality system standards that incorporate ISO–9001 or ISO–9002 (e.g. QS–9000, ARD–9000, etc.);

(ii) A requirement that raw material certification supplied to the fastener manufacturer shall be traceable to that of a mill heat of material that has been tested by a laboratory on the Accredited Laboratory List;

(iii) A requirement that subcontracted processes, including plating and heat treating, are controlled by the manufacturer, and performed by a Facility on the Facilities List described in § 280.810 or tested by a Laboratory on the Laboratories List described in § 280.101, to avoid product lot contamination, and that finished lots of fasteners shall be traceable to subcontracted processes;

(iv) A QAS plan, requiring that the fastener manufacturer fully document fastener sampling and inspection points and an in-process control plan that emphasizes defect prevention, relates frequency of inspection, corrective action for nonconforming characteristics, and sampling frequency and sample size; a requirement that the control plan be made available to the customer upon request and shall identify those standards and specifications upon which the plan is based; and

(v) A requirement that the in-process control plan include those characteristics specified by the QAS standard, characteristics specifically indicated by applicable fastener standards or specifications (consensus or major end-user standards as defined by the Act and this part), or those characteristics appropriate for evaluating product functionality.

* * * * *

Lot number means a number assigned by a manufacturer, importer, distributor, or significant alterer to the lot. A lot number assigned by an importer, distributor, or significant alterer shall be traceable to a manufacturer's single, unique lot number.

* * * * *

Original laboratory testing report means:

(1) In general, a laboratory testing report which is originally signed by an approved signatory or is a copy thereof, certified by the laboratory that conducted the test; or

(2) For purposes of the alternative procedures for chemical characteristics described in section 5(d) of the Act and § 280.15 of this part only, a laboratory testing report which is originally signed by an approved signatory or is a copy thereof, certified by the laboratory that conducted the test or by the metal manufacturer.

* * * * *

Registrar means a quality systems registrar that meets the requirements of subpart L of this part, is accredited by an Accreditor as defined in this part, and appears on the Registrars List described in § 280.810(b).

* * * * *

Registration means evaluation and certification of a manufacturing facility as competent to carry out and conforming to the applicable requirements of a Fastener Quality Assurance System when such evaluation and certification is performed by a Registrar as defined in this part.

* * * * *

Significantly alter means to alter or take any other action which could weaken or otherwise materially affect the performance or capabilities of the fastener as it was originally manufactured, grade or property class marked, tested, or represented. The term does not include the application of adhesives or sealants, locking elements, provisions for lock wires, coatings and platings of parts having a minimum specified Rockwell C hardness of less than 32, or cutting off of fasteners. The cutting of finished threaded rods, bars or studs to produce individual smaller length threaded studs for resale is not a significant alteration. However, cut threaded studs, rods, and bars offered for sale shall be individually marked with the grade or property class identification marking appearing on or accompanying the original threaded studs, rods, and bars from which the fasteners were cut.

* * * * *

4. Section 280.6 is amended by redesignating paragraphs (b) and (c) as paragraphs (c) and (d) respectively, adding new paragraphs (b) and (e), and revising redesignated paragraph (c)(5)(ii) to read as follows:

§ 280.6 Laboratory Test Reports.

* * * * *

(b) When performing tests for which they are registered under this part, each facility registered under Subpart I or J of these regulations and currently listed in the Facilities List shall issue test reports of its work which accurately, clearly, and unambiguously present a synopsis of test results, and all information required by this section. In addition, the facilities shall attach reports of chemical characteristics and any report of the tests conducted in a laboratory under the accredited laboratories list. All

reports must be in English or be translated into English, must be signed by an approved signatory, must be protected by a tamper resistant system, and contain the following information:

(1) Name and address of the facility;

(2) Unique identification of the test report including date of issue and serial number, or other appropriate means;

(3) Name and address of client, if applicable;

(4) Fastener Description, including:

(i) Manufacturer (name and address);

(ii) Product family (screw, nut, bolt, washer, or stud), drive and/or head configurations as applicable;

(iii)Date of manufacture;

(iv) Head markings (describe or draw manufacturer's recorded insignia and grade identification or property class symbols);

(v) Nominal dimensions (diameter; length of bolt, screw or stud; thickness of load bearing washer); thread form and class of fit;

(vi) Product standards and specifications, if any, related to the facility in writing by the manufacturer, importer or distributor;

(vii) Lot number;

(viii) Specification and grade of material;

(ix) Coating material and standard and specification as applicable;

(5) Sampling information:

(i) Standards and specifications or reference for sampling scheme;

(ii) Production lot size and the number sampled;

(iii) Name(s) and affiliation of person performing the lot sampling;

(6) Test Results:

(i) Actual tests required by the standard and specification;

(ii) Test results;

(iii) All deviations from the test method;

(iv) All other items required on test reports according to the test method;

(v) Where the report contains results of tests performed by sub-contractors, these results shall be clearly identified along with the name of the laboratory/facility and accreditation/registration information listed in paragraph (b)(10) of this section.

(vi) A statement that the samples tested either *conform* or *do not conform* to the fastener standards and specifications or standards and identification of any nonconformance;

(7) A statement that the report must not be reproduced except in full;

(8) A statement to the effect that the test report relates only to the item(s) tested;

(9) Name, title and signature of approved signatory accepting technical responsibility for the tests and test report;

(10) The name of the registrar which registered the facility, and code number assigned to the facility by the registrar, and the expiration of registration.

(c) * * *

(5) * * *

(ii) Test results for such coil or heat number chemical characteristics;

* * * * *

(e) For tests carried out by a Facility registered pursuant to subpart I or J, the facility shall maintain laboratory test reports in the forms of electronic, photographic, or paper records, available for inspection during the periods required by section 10 of the Act and § 280.7, regarding the inspections, tests, and measurements required or performed pursuant to the QAS control plan.

5. Section 280.7 is amended by revising paragraph (a)to read as follows:

§ 280.7 Recordkeeping Requirements.

(a) Each laboratory accredited under subparts C, D, or E or § 280.104 of this part shall retain for 5 years after the performance of a test all records pertaining to that test concerning the inspection and testing, and certification, of fasteners under the Act and this part. The final test report or the test records maintained by the laboratory shall contain sufficient information to permit the test to be repeated at a later time if a retest is necessary. The laboratory shall maintain the test report and a record of all original observations, calculations, and derived data. The records shall include the identity of personnel involved in sample preparation and testing. Procedures for storage and retrieval of records must be documented and maintained in the laboratory's quality manual.

* * * * *

6. Section 280.10 is revised to read as follows:

§ 280.10 Sampling.

In the event that the standard or specification to which a manufacturer represents the fasteners in a particular sample to have been manufactured does not provide for the size, selection or integrity of the sample to be inspected and tested, inspections and tests under section 5 of the Act shall be carried out using ASME/ANSI B18.18.2M, *Inspection and Quality Assurance For High-Volume Machine Assembly Fasteners;* ASME/ANSI B18.18.3M, *Inspection and Quality Assurance for Special Purpose Fasteners;* or ASME/ANSI B18.18.4M, *Inspection and Quality Assurance for Highly Specialized Engineering Applications—Fasteners,* or a sampling plan provided by a Fastener Quality Assurance System or by standards and specifications intended for use with a Fastener Quality Assurance System, as appropriate.

7. Section 280.11 is amended by redesignating paragraphs (c) and (d) as paragraphs (d) and (e) respectively, adding new paragraph (c), and revising paragraph (b) and redesignated paragraph (d) to read as follows:

§ 280.11 Significant Alterations of Fasteners.

* * * * *

(b) If the significant alteration is only electroplating of fasteners having a minimum specified Rockwell C hardness of 32 or above, the requirements set forth in paragraphs (a)(2) and (a)(3) of this section shall not apply, but the alterer shall assign a new lot number as set forth in paragraph (a)(1) of this section and shall test the electroplated fasteners as required by the plating standards and specifications.

(c) If the significant alteration is only the removal of manufacturer or grade identification markings for decorative purposes at the customer's request, the requirements set forth in paragraph (a)(2) of this section shall not apply, but the alterer shall assign a new lot number as set forth in paragraph (a)(1) of this section and shall either test the fasteners or provide a written statement disclosing the alteration as set forth in paragraph (a)(3) of this section. Along with such an order the fastener manufacturer must require a written certification from the customer stating that fasteners from the altered lot will not be held or sold as meeting the requirements of a consensus standard which requires manufacturer or grade identification markings.

(d) Any person who knowingly sells a significantly altered fastener as described in paragraph (a) of this section, and who did not alter such fastener, shall provide to the purchaser a copy of the statement required by paragraph (a)(3) of this section; unless the significant alteration is only electroplating of the fastener, as described in paragraph (b) of this section or removal of manufacturer or grade identification markings, as described in paragraph (c) of this section.

* * * * *

8. Section 280.12 is revised to read as follows:

§ 280.12 Applicability.

(a) The requirements of the Fastener Quality Act and this part shall be applicable only to fasteners manufactured on or after May 26, 1998.

(b) Metal manufactured prior to May 26, 1998 may not be used to

manufacture fasteners subject to the Act and this part unless the metal has been tested for chemistry pursuant to § 280.15 of this part by a laboratory accredited under the Act and this part and the chemical characteristics of the metal conform to those required by the standards and specifications.

(c) Nothing in the Act and this part prohibits selling finished fasteners manufactured prior to May 26, 1998 or representing that such fasteners meet standards and specifications of a consensus standards organization or a government agency.

9. Section 280.104 is added to subpart B to read as follows:

§ 280.104 Accreditation of Certain Manufacturing Facilities as Laboratories

(a) Subject to the limitations contained in paragraphs (b), (c), and (d) of this section, registration of a fastener manufacturing facility employing a fastener quality assurance system shall be deemed to meet the requirements of accreditation of a laboratory for purposes of the Act and this part. The independent third-party registrar registering such facility under this section shall comply with all procedures set forth in subparts I through L of this part. Records documenting the inspection and testing of a lot of fasteners performed by such an accredited laboratory shall be maintained by the facility in accordance with the requirements of §§ 280.6 and 280.7.

(b) In any instance where a Facility accomplishes any in-process inspection and testing by performing laboratory tests on a sample of fasteners at any stage in the manufacturing process, those tests must be conducted by a laboratory on the Accredited Laboratory List. Such a laboratory may be located on the same premises as a fastener manufacturing facility if the laboratory is separately accredited pursuant to a provision of this part other than § 280.104(a).

(c) Any laboratory tests performed outside the Facility's in-process inspection and testing must be conducted by a laboratory on the Accredited Laboratory List.

(d) Chemical testing and raw material testing must be performed by a laboratory on the Accredited Laboratory List.

10. Section 280.602 is amended by revising paragraphs (e)(2), (h), and (j) and adding paragraphs (k), (l), (m), and (n) to read as follows:

§ 280.602 Violations.

* * * * *

(e) *Misrepresentation and concealment of facts* * * *

(2) In connection with the preparation, submission, use, maintenance of a laboratory test report, certificate of conformance as described in §§ 280.5 and 280.6 of this part or any quality assurance system document required by this part or;

* * * * *

(h) *Falsification of Documents Relating to Accreditation of Laboratories or Registrars or Approval or Recognition of Accreditors or Accreditation Bodies.* No person shall falsify or make any false or misleading statement on or in connection with any document relating to laboratory accreditation or approval or recognition of accreditation bodies, Accreditors or Registrars as required by section 6(a) or 6(b) of the Act or this part.

* * * * *

(j) *Falsification of Laboratory Accreditation, Accreditation Body or Accreditor.* No person shall falsely claim to be an accredited laboratory or approved or recognized accreditation body or Accreditor as described in section 6 of the Act or subparts B, C, D, E, I and J of this part.

(k) *Sale of fasteners manufactured prior to the implementation date as compliant with the Act.* No person shall represent, sell, or offer for sale fasteners manufactured prior to May 26, 1998 as being in conformance with the Act or this part.

(l) *Failure to Assign lot number traceable to Manufacturer's single, unique lot number:* No importer, distributor, or significant alterer shall assign a lot number unless the assigned lot number is traceable to a manufacturer's single, unique lot number.

(m) *Falsification of Documents relating to the registration of Fastener Manufacturing Facilities as accredited laboratories, accreditation of Registrars or recognition of Accreditors.* No person shall falsify or make any false or misleading statement on or in connection with any document relating to the registration of Fastener Manufacturing Facilities as accredited laboratories, accreditation of Registrars or recognition of Accreditors as required by Subparts I, J, K, and L of this part.

(n) *False claim of registration of Fastener Manufacturing Facilities as accredited laboratories, accreditation of Registrars, and recognition of Accreditors.* No person shall falsely claim to be a registered Fastener Manufacturing Facility, an accredited Registrar, or a recognized Accreditor as described by Subparts I, J, K, and L of this part.

11. Subparts I through L are added to read as follows:

Subpart I—Special Rule for the Accreditation of Certain Fastener Manufacturing Facilities, Whose Implemented Fastener Quality Assurance Systems Meet Defined Requirements, as Laboratories

Sec.

280.800 Introduction.
280.801 Application.
280.802 Review and decision process.
280.803 Criteria for recognition.
280.804 Maintaining recognized status.
280.805 Voluntary termination of recognition.
280.806 Involuntary termination of recognition by NIST.
280.807 Subcontracting.
280.808 Reports.
280.809 Recordkeeping.
280.810 Listing of recognized accreditors, accredited registrars, and registered facilities.
280.811 Removal from a list.
280.812 Appeal.

§ 280.800 Introduction.

(a) This special rule applies to those fastener manufacturers, employing a fastener quality assurance system (QAS) as defined in this part, who wish to seek accreditation of the particular manufacturing facility employing the QAS as a laboratory within the meaning of the Act. This rule consists of this subpart, and subparts J, K, and L. The rule adopts the view that a fastener manufacturing facility is deemed to be an accredited laboratory for purposes of the Act and this part if such facility employs a fastener quality assurance system (QAS) that has been formally registered by a NIST-recognized quality systems registrar. The rule applies only to facilities manufacturing fasteners; raw materials for fastener manufacture must be tested and certified by a laboratory listed on the Accredited Laboratory List. This subpart sets out the full process that NIST requires for the accreditation of a fastener manufacturing facility employing a QAS in the United States: a fastener manufacturing facility employing a QAS (a ''Facility'') will be deemed to be an accredited laboratory if it is registered by a Quality Systems Registrar (a ''Registrar'') that in turn has been accredited by a Registrar Accreditation Body (an ''Accreditor'') that has been recognized by NIST. Subpart J provides for foreign Accreditors to be recognized and to recognize Registrars under the same procedures.

(b) A chain is thus established to assure the proper regulation of

Facilities: NIST recognizes Accreditors that meet the requirements of subpart K, which is based upon ISO Guide 61; the NIST-recognized Accreditors may, in turn, accredit Registrars that meet the requirements of Subpart L, which is based upon ISO Guide 62. The Registrars, in turn, may register Facilities that satisfy the elements of a fastener quality assurance system (QAS), as defined in this part.

(c) Within this subpart, §§ 280.801 through 280.809 contain the procedures that NIST uses to process requests from Accreditors for recognition by NIST. Section 280.810 establishes three lists that NIST will maintain: § 280.810(a) provides for a list of Accreditors that have been recognized by NIST; § 280.810(b) provides for a list of Registrars that have been accredited by Accreditors listed according to § 280.810(a); and § 280.810(c) provides for a list of Facilities that have been registered by Registrars listed according to § 280.810(b). The remainder of this subpart, §§ 280.811 and 280.812, contain procedural provisions related to the lists established by § 280.810.

§ 280.801 Application.

(a) Application must be made by Accreditors to NIST for recognition to accredit Registrars under the Act. Upon request, NIST will provide application forms and instructions. The applicant shall complete the application in English and may provide whatever additional enclosures, attachments or exhibits the applicant deems appropriate.

(b) Application packages may be obtained from: Manager, FQA Accreditation Body Evaluation Program, NIST, Bldg. 820, Room 282, Gaithersburg, Maryland, 20899. Requests may be made by mail or by FAX to: (301) 963–2871.

(c) The applicant shall reimburse NIST for all costs incurred in the evaluation of its accreditation program and subsequent costs incurred in ensuring the continued compliance of its program. Reimbursement shall be in accordance with the fee schedule established by NIST for this purpose.

(d) An application may be revised by an applicant at any time prior to the final decision by NIST. An application may be withdrawn by an applicant, without prejudice, at any time prior to the final decision by NIST.

§ 280.802 Review and decision process.

(a) Applications submitted by Accreditors will be accepted by NIST and their receipt acknowledged in writing. The applications will be reviewed by NIST against the criteria specified in this subpart and in subpart K of this part. NIST may request additional information as needed from the applicant.

(b) NIST shall conduct on-site assessments of the facilities of the applicant including all of the applicant's organizational units and locations covered by the application.

(c) If the applicant's program is deemed by NIST to have met the requirements for recognition, the applicant shall be notified by NIST in writing. The recognition notice shall include the date when the recognition begins and the scope of the recognition. The recognition period shall be for as long as the Accreditor continues to satisfy the requirements of § 280.803. As part of maintaining its approved status, each Accreditor shall agree to be reassessed by NIST every two years following its initial notice of recognition. NIST will maintain and make available to the public a list of recognized Accreditors.

(d) If the applicant does not meet the requirements for recognition, the applicant shall be notified in writing, listing the specific requirements from this subpart and subpart K of this part which the applicant's program has not met. After receipt of such a notification, and within the response period provided by NIST, the applicant may:

(1) Submit additional information for further review. Reviewing the new submission may involve additional on-site visits by NIST personnel. Additional fees may be required. Or,

(2) Submit a request that the original application be reconsidered, including a statement of reasons why the applicant should have been recognized.

§ 280.803 Criteria for recognition.

An applicant for NIST recognition must demonstrate the ability to operate a registrar accreditation program consistent with the requirements of this subpart and subparts A and K of this part, and accredit registrars of Facilities to requirements set out in subpart L of this part.

§ 280.804 Maintaining recognized status.

(a) Accreditors shall continue to satisfy all the requirements of recognition during the recognition period.

(b) Upon request, recognized Accreditors shall make available to NIST and/or BXA all records and materials pertaining to the program.

(c) NIST has the right to participate as an observer during any on-site visit to a Registrar being audited by a NIST-recognized Accreditor, or a Facility being audited by an accredited Registrar, or it may perform its own surveillance visit of such bodies at its discretion.

(d) Neither the Accreditor, nor any Registrar it accredits, nor any Facility registered under the Act and this part shall take any action which states or implies the approval, or endorsement by NIST or any other agency of the U.S. Federal Government of any product or report pertaining to a product associated with any activities carried out under the recognition. None of these entities may take any action which states or implies that they are recognized or authorized by NIST to act or perform in any area(s) beyond that which was specified in their recognition under this part.

§ 280.805 Voluntary termination of recognition.

An Accreditor may voluntarily terminate its recognition by giving written notice to NIST and to all Registrars accredited by that body under its accreditation program. The written notice shall state the date on which the termination will take effect.

§ 280.806 Involuntary termination of recognition by NIST.

(a) NIST may terminate or suspend its recognition of an Accreditor if such an action is deemed to be in the public interest.

(b) Before terminating the recognition of an Accreditor, NIST will notify the Accreditor in writing, giving it the opportunity to rebut or correct the stated reasons for the proposed termination. If the problems are not corrected or reconciled within 30 days, or such longer time as NIST in its sole discretion may grant, the termination shall become effective.

(c) An Accreditor may appeal a termination to the Director by submitting a statement of reasons why the recognition should not be terminated. NIST may, at its discretion, hold in abeyance the termination action pending a final decision by the Director. Within 60 days following receipt of the appeal, the Director shall inform the Accreditor in writing of his or her decision.

(d) Registrars and registered organizations which have been listed by NIST in accordance with this subpart, based on their accreditation by an Accreditor whose recognition has been terminated, shall be removed from the list, unless an exception is granted by NIST.

§ 280.807 Subcontracting.

If a recognized Accreditor, an accredited Registrar, or a registered Facility subcontracts any of its functions

to another entity it must place the work with another recognized Accreditor, accredited Registrar, or registered Facility; inform the client, before the fact, that subcontracting will be necessary, and clearly indicate in all appropriate records, and reports to the client, specifically what functions were subcontracted.

§ 280.808 Reports.

Reports and records shall be maintained in such a manner to preserve original data, and be collected as required into a final form, sufficient to satisfy customer and legal requirements. Such reports shall be provided upon request to the Bureau of Export Administration, to the National Institute of Standards and Technology, or to any other agency of the federal government authorized to obtain such records under this part.

§ 280.809 Recordkeeping.

Each recognized Accreditor, accredited Registrar, or fastener manufacturer whose Facility has been registered shall retain all applicable records required under the Act and this part for 5 years. All records are subject to the requirements in § 280.7 of this part.

§ 280.810 Listing of recognized accreditors, accredited registrars, and registered facilities.

(a) List of Accreditors. NIST shall prepare and maintain a list of Accreditors recognized under this subpart and subpart J.

(b) List of Registrars. NIST shall prepare and maintain a list of Registrars accredited by Accreditors listed in accordance with § 280.810(a).

(1) Names and information regarding accredited Registrars may only be included on the list from information submitted to NIST by an Accreditor listed in accordance with § 280.810(a) that submits the listing fee established by NIST and the following information, in English:

(i) The name of the Accreditor which granted the accreditation ;

(ii) The name and address of the Registrar affected by the accreditation action;

(iii) The nature of the accreditation action (e.g., initial accreditation, renewal of accreditation, etc.);

(iv) A copy of the Registrar's accreditation certificate and a scope of accreditation which states the quality system standard(s) for which the Registrar has been accredited for purposes of assessing and registering a fastener manufacturer's Facility; and

(v) The name and telephone number of the accredited Registrar's authorized representative(s), and information concerning the physical locations of all organizational units involved in the accreditation activities.

(2) All Accreditors listed by NIST in accordance with § 280.810(a) shall promptly notify NIST of each accreditation action taken. Accreditation actions include initial accreditations, denials of accreditation, renewals, suspensions, terminations, and changes in scope. Notifications shall be filed with: Fastener Quality Act Program Manager, Office of Standards Services, National Institute of Standards and Technology, Gaithersburg, Maryland 20899.

(c) List of facilities. NIST shall prepare and maintain a list of Facilities registered by Registrars listed in accordance with § 280.810(b).

(1) Names and information regarding registered Facilities may only be included on the list from information submitted to NIST by accredited Registrars listed in accordance with § 280.810(b) that submit the listing fee established by NIST, through their Accreditors, and the following information:

(i) The name of the fastener manufacturer and the address of the registered Facility;

(ii) The name of the authorized representative of the fastener manufacturer whose Facility is registered;

(iii) The scope of registration, stating the quality system standard(s) to which the Facility has been registered; and

(iv) The effective dates of the registration.

(2) All Registrars listed by NIST in accordance with § 280.810(b) shall promptly notify NIST of each registration action. Registration actions include initial registrations, denials of registration, renewals, suspensions, terminations, and changes in scope. Notifications shall be filed with: Fastener Quality Act Program Manager, Office of Standards Services, National Institute of Standards and Technology, Gaithersburg, Maryland 20899.

(d) These lists will be readily accessible to the public. Only entities listed by NIST are authorized to offer services which comply with the Act and this part. NIST shall revise as appropriate all listings when notified of applicable actions and shall take appropriate steps to make changes promptly available to the public.

§ 280.811 Removal from a list.

NIST may remove from a list any listed entity if NIST deems such action to be in the public interest. An entity may appeal the removal or proposed removal from a list to the Director by submitting a statement of reasons why it should remain on the list. NIST may, at its discretion, hold in abeyance a removal action pending a final decision by the Director. The Director shall inform the entity in writing of the decision within sixty days following receipt of the appeal.

§ 280.812 Appeal.

An applicant Accreditor, Registrar, or fastener manufacturer whose Facility has been registered may appeal the removal or proposed removal from the Accreditors list, the Registrars list, or the Facilities list, to the Director.

Subpart J—Recognition of Foreign Registrar Accreditation Bodies

Sec.

280.900 Introduction.
280.901 Recognition of foreign entities.

§ 280.900 Introduction.

In accordance with section 6(a)(1)(C) of the Act, this subpart sets forth the conditions under which the recognition of foreign entities by their governments, by organizations acting on behalf of their governments, or by organizations recognized by the Director shall be deemed to meet the requirements of the Act.

§ 280.901 Recognition of foreign entities.

Foreign Accreditors wishing to be recognized to accredit Registrars must submit an application for evaluation to NIST according to subpart I. NIST recognition is limited to bodies that accredit Registrars which register Facilities producing fasteners covered by the Act. To be recognized by NIST, Accreditors must meet conditions set out in subparts I and K and accredit Registrars of Facilities to conditions set out in subpart L.

Subpart K—Requirements for Registrar Accreditation Bodies (Accreditors)

Sec.

General

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Requirements for Accreditors

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General

§ 280.1000 Introduction.

This subpart sets out organizational, operational and other requirements that must be met by all Accreditors recognized by NIST under subpart I or J of this part. This subpart also sets out the requirements against which an Accreditor assesses the competence of an applicant Registrar.

§ 280.1001 Scope.

These are general requirements for an Accreditor to follow if it is to be recognized as competent and reliable in assessing and subsequently accrediting Registrars.

Requirements for Accreditors

§ 280.1010 Accreditors.

(a) *General provisions*. (1) The policies and procedures under which the Accreditor operates shall be non-discriminatory, and they shall be administered in a non-discriminatory manner. Procedures shall not be used to impede or inhibit access by applicant bodies other than as specified in this part.

(2) The Accreditor shall make its services accessible to all applicants whose activities fall within its declared field of operation. There shall not be undue financial or other conditions. Access shall not be conditional upon the size of the applicant body or membership of any association or group, nor shall accreditation be conditional upon the number of bodies already accredited.

(3) The accreditation criteria against which the competence of a registrar is assessed shall be those outlined in subpart L of this part. If an explanation is required as to the application of these documents to a specific accreditation program, it shall be formulated by relevant and impartial committees or persons possessing the necessary technical competence, and published by the Accreditor.

(4) The Accreditor shall confine its requirements, assessment and decisions on accreditation to those matters specifically related to the scope of the accreditation being considered.

(b) *Organization of a recognized Accreditor*. The structure of the Accreditor shall be such as to give confidence in its accreditations. In particular, the Accreditor shall:

(1) Be impartial;

(2) Be responsible for its decisions relating to the granting, maintaining, extending, reducing, suspending and withdrawing of accreditation;

(3) Identify the management (committee, group or person) which will have overall responsibility for all of the following:

(i) Performance of assessment and accreditation as defined in this part;

(ii) Formulation of policy matters relating to the operation of the Accreditor;

(iii) Decisions on accreditation;

(iv) Supervision of the implementation of its policies;

(v) Supervision of the finance of the Accreditor; and

(vi) Delegation of authority to committees or individuals, as required, to undertake defined activities on its behalf.

(4) Have documents which demonstrate that it is a legal entity;

(5) Have a documented structure which safeguards impartiality, including provisions to assure the impartiality of the operations of the Accreditor; this structure shall enable the participation of all parties significantly concerned in the development of policies and principles regarding the content and functioning of the accreditation system;

(6) Ensure that each decision on accreditation is taken by a person or persons different from those who carried out the assessment;

(7) Have rights and responsibilities relevant to its accreditation activities;

(8) Have adequate arrangements to cover liabilities arising from its operations and/or activities;

(9) Have financial stability and resources required for the operation of an accreditation system;

(10) Employ a sufficient number of personnel having the necessary education, training, technical knowledge and experience for performing accreditation functions relating to the type, range and volume of work performed, under a responsible senior executive;

(11) Have a quality system, as outlined in § 280.1010(d), giving confidence in its ability to operate an accreditation system for registration bodies;

(12) Have policies and procedures that distinguish between accreditation and any other activities in which the Accreditor is engaged;

(13) Together with its senior executive and staff, be free from any commercial, financial and other pressures which might influence the results of the accreditation process;

(14) Have formal rules and structure for the appointment and operation of any committees which are involved in the accreditation process; such committees shall be free from any commercial, financial and other pressures that might influence decisions;

(15) Ensure that activities of related bodies do not affect the confidentiality, objectivity or impartiality of its accreditations and shall not offer or provide, directly or indirectly, those services that accredit others to perform, consulting services to obtain or maintain accreditation, or services to design, implement or maintain a certification scheme;

(16) Have policies and procedures for the resolution of complaints, appeals and disputes received from bodies or other parties about the handling of accreditation of any related matters;

(17) Have a structure where members are chosen to provide a balance of interest, where no single interest predominates; and

(18) Assure that other products, processes or services that may be offered, directly or indirectly, do not compromise confidentiality or the objectivity or impartiality of its accreditation process and decisions.

(c) *Subcontracting*. (1) When an Accreditor decides to subcontract work related to accreditation (e.g. audits) to an external body or person, a properly documented agreement covering the arrangements, including confidentiality and conflict of interest, shall be drawn up. The Accreditor shall:

(i) Take full responsibility for such subcontracted work and maintain its responsibility for granting, maintaining, extending, reducing, suspending or withdrawing accreditation

(ii) Ensure that the subcontracted body or person is competent and complies with the applicable provisions of this part, including § 280.807, and is not involved, either directly or through its employer, with the design, implementation or maintenance of a registration scheme in such a way that impartiality could be compromised; and

(iii) obtain the consent of the applicant or accredited body.

(2) Requirements in paragraphs (c)(1)(i) and (ii) of this section are also relevant, by extension, when an Accreditor uses, for granting its own accreditation, work provided by another Accreditor with which it has signed an agreement.

(d) *Quality system*. (1) The management of the Accreditor with executive responsibility for quality shall define and document its policy for quality, including objectives for quality and its commitment to quality. The management shall ensure that this

policy is understood, implemented and maintained at all levels of the organization.

(2) The Accreditor shall operate a quality system in accordance with the relevant elements of this part and appropriate to the type, range and volume of work performed. This quality system shall be documented, and the documentation shall be available for use by the staff of the Accreditor.

(3) The Accreditor shall ensure effective implementation of the documented quality system procedures and instructions.

(4) The Accreditor shall designate a person with direct access to its highest executive level who, irrespective of other responsibilities, shall have defined authority to ensure that a quality system is established, implemented and maintained in accordance with this part, and report on the performance of the quality system to the management of the Accreditor for review and as a basis for improvement of the quality system.

(5) The quality system shall be documented in a quality manual and associated quality procedures, and the quality manual shall contain or refer to at least the following: :

(i) A quality policy statement;

(ii) A brief description of the legal status of the Accreditor, including the names of its owners, if applicable, and, if different, the names of the persons who control it;

(iii) The names, qualifications, experience and terms of reference of the senior executive and other accreditation personnel influencing the quality of the accreditation function;

(iv) An organization chart showing lines of authority, responsibility and allocation of functions stemming from the senior executive and, in particular, the relationship between those responsible for the assessment and those making decisions regarding accreditation;

(v) A description of the organization of the Accreditor, including details of the management (committee, group or person), its constitution, terms of reference and rules of procedure;

(vi) The policy and procedures for conducting management reviews;

(vii) Administrative procedures including document control;

(viii) The operational and functional duties and service pertaining to quality, so that the extent and limits of each person's responsibility are known to all concerned;

(ix) The policy and procedures for the recruitment and training of Accreditor personnel (including auditors) and monitoring their performance;

(x) A list of its subcontractors and details of the procedures for assessing, recording and monitoring their competence;

(xi) Its procedures for handling nonconformities and for assuring the effectiveness of any corrective actions taken;

(xii) The policy and procedures for implementing the accreditation process, including:

(A) The conditions for issue, retention and withdrawal of accreditation documents

(B) Checks of the use and application of documents used in the accreditation

(C) The procedures for assessing and accrediting applicants; and

(D) The procedures for surveillance and reassessment of accredited bodies.

(xiii) The policy and procedures for dealing with appeals, complaints and disputes; and

(xiv) The procedures for conducting internal audits based on appropriate international documentation.

(e) *Conditions for granting, maintaining, extending, reducing, suspending and withdrawing accreditation.* (1) The Accreditor shall specify the conditions for granting, maintaining, extending and reducing accreditation, and the conditions under which accreditation may be suspended or withdrawn, partially or in total, for all or part of the accredited body's scope of accreditation. In particular, the Accreditor shall require the accredited body to notify it promptly of any intended changes to the quality system or other changes which may affect conformity.

(2) The Accreditor shall have procedures to grant, maintain, withdraw and suspend accreditation; to extend or reduce the scope of accreditation; and to conduct reassessment in the event of changes significantly affecting the activity and operation of the accredited body (such as change of ownership, changes in personnel or equipment), or if analysis of a complaint or any other information indicates that the accredited body no longer complies with the requirements of the Accreditor.

(f) *Internal audits and management reviews.* (1) The Accreditor shall conduct periodic internal audits covering all procedures in a planned and systematic manner, to verify that the quality system is being implemented and is effective. The Accreditor shall ensure that personnel responsible for the area audited are informed of the outcome of the audit; corrective action is taken in a timely and appropriate manner; and the results of the audit are documented.

(2) The top management of the Accreditor shall review its quality system at defined intervals sufficient to ensure its continuing suitability and effectiveness in satisfying the requirements of this part and the stated quality policy and objectives. Records of such reviews shall be maintained.

(g) *Documentation.* (1) The Accreditor shall document, update at regular intervals, and make available (through publications, electronic media or other means), on request:

(i) Information about the authority under which the Accreditor operates;

(ii) A documented statement of its accreditation system, including its rules and procedures for granting, maintaining, extending, reducing, suspending and withdrawing accreditation;

(iii) Information about the assessment and accreditation process;

(iv) A description of the means by which the Accreditor obtains financial support, and general information on the fees charged to applicants and accredited bodies;

(v) A description of the rights and duties of applicants and accredited bodies, as specified, including requirements, restrictions or limitations on the use of the Accreditor's logo and on the ways of referring to the accreditation granted, in conformance with § 280.804(d); and

(vi) Information on procedures for handling complaints, describing the scope of accreditation granted to each.

(2) The Accreditor shall establish and maintain procedures to control all documents and data that relate to its accreditation functions. These documents shall be reviewed and approved for adequacy by appropriately authorized and competent personnel prior to issuing any documents following initial development or any subsequent amendment or change being made. A listing of all appropriate documents with the respective issue and/or amendment status identified shall be maintained. The distribution of all such documents shall be controlled to ensure that the appropriate documentation is made available to personnel of the Accreditor, or applicants and accredited bodies, when required to perform any function relating to the activities of applicants and accredited bodies.

(h) *Records.* (1) The Accreditor shall maintain a record system to suit its particular circumstances and to comply with this part. The records shall demonstrate that accreditation procedures have been effectively fulfilled, particularly with respect to application forms, assessment reports,

and other documents relating to granting, maintaining, extending, reducing, suspending or withdrawing accreditation. The records shall be identified, managed and disposed of in such a way as to ensure the integrity of the process and confidentiality of the information. The records shall be kept for a period of five years.

(2) The Accreditor shall have a policy and procedures for retaining records for a period of five years. The Accreditor shall have a policy and procedures concerning access to these records consistent with paragraph (h)(1) of this section.

(i) *Confidentiality.* (1) The Accreditor shall have adequate arrangements, consistent with applicable laws, to safeguard confidentiality of the information obtained in the course of its accreditation activities at all levels of its organization, including committees and external bodies or individuals acting on its behalf.

(2) Except as required in this part, information about a particular body shall not be disclosed to a third party without the written consent of the body.

§ 280.1011 Accreditor personnel.

(a) *General provisions.* (1) The personnel of the Accreditor involved in accreditation shall be competent for the functions they perform.

(2) Information on the relevant qualifications, training and experience of each member of the personnel involved in the accreditation process shall be maintained by the Accreditor. Records of training and experience shall be kept up to date.

(3) Clearly documented instructions shall be available to the personnel describing their duties and responsibilities. These instructions shall be maintained up to date.

(b) *Qualification criteria for auditors and technical experts.* (1) In order to ensure that assessments are carried out effectively and uniformly, the minimum relevant criteria for competence shall be defined by the Accreditor.

(2) Auditors shall meet the requirements of the appropriate international documentation.

(3) Technical experts are not required to comply with the requirements for auditors, and guidance on their personal attributes may be obtained from appropriate international documentation.

(c) *Selection procedure.* (1) The Accreditor shall have a procedure for selecting auditors and, if applicable, technical experts on the basis of their competence, training, qualifications and experience, and for initially assessing the conduct of auditors and technical experts during assessments, and subsequently monitoring the performance of auditors and technical experts.

(2) When selecting the audit team to be appointed for a specific assessment, the Accreditor shall ensure that the skills brought to each assignment are appropriate. The team shall:

(i) Be familiar with the Fastener Quality Act and its implementing regulations, accreditation procedures and accreditation requirements;

(ii) Have a thorough knowledge of the relevant assessment method and assessment documents;

(iii) Have appropriate technical knowledge of the fastener technology for which accreditation is sought and, where relevant with associated procedures and their potential for failure (technical experts who are not auditors may fulfil this function);

(iv) Have a degree of understanding sufficient to make a reliable assessment of the competence of the accredited body to operate within its scope;

(v) Be able to communicate effectively, both in writing and orally, in the required languages;

(vi) Be free from any interest that might cause team members to act in other than an impartial or non-discriminatory manner, for example,

(A) Audit team members or their organization shall not have provided consulting services to the applicant or accredited body which compromise the accreditation process and decision; and

(B) In accordance with the directives of the Accreditor, the audit team members shall inform the Accreditor, prior to the assessment, about any existing, former or envisaged link between themselves or their organization and the body to be assessed.

(d) *Contracting of assessment personnel.* The Accreditor shall require the personnel involved in the assessment to sign a contract or other document by which they commit themselves to comply with the rules defined by the Accreditor, including those relating to confidentiality and those relating to independence from commercial and other interest, and any prior and/or present link with the bodies to be assessed. The Accreditor shall ensure that, and document how, any subcontracted assessment personnel satisfy all the requirements for personnel outlined in this subpart.

(e) *Assessment personnel records.* (1) The Accreditor shall possess and maintain up-to-date records on personnel conducting assessments, consisting of:

(i) Name and address;

(ii) Affiliation and position held in the organization;

(iii) Educational qualifications and professional status;

(iv) Experience and training in each field of competence of the Accreditor;

(v) Date of most recent updating of record; and

(vi) Performance appraisal.

(2) The Accreditor shall ensure, and verify, that any subcontracted body maintains records, which satisfy the requirements of this part, of assessment personnel who are subcontracted to the Accreditor.

(f) *Procedures for assessment teams.* Assessment teams shall be provided with up-to-date assessment instructions and all relevant information on accreditation arrangements and procedures.

§ 280.1012 Decision on accreditation.

(a) The decision whether or not to accredit a body shall be made on the basis of the information gathered during the accreditation process and any other relevant information. Those who make the accreditation decision shall not have participated in the audit.

(b) The Accreditor shall not delegate authority for granting, maintaining, extending, reducing, suspending or withdrawing accreditation to an outside person or body.

(c) The Accreditor shall provide to each of its accredited bodies accreditation documents such as a letter outlining the scope of accreditation and a certificate signed by an officer who has been assigned such responsibility. These accreditation documents shall identify, for the body and each of its sites covered by the accreditation:

(1) The name and address;

(2) The scope of the accreditation granted, including as appropriate:

(i) The type of registration scheme;

(ii) The standards and/or other normative documents and regulatory requirements against which products, services or systems are registered; and

(iii) Product categories.

(3) The effective date of accreditation and, as applicable, the term for which the accreditation is valid.

(d) In response to an application for an amendment to the scope of an accreditation already granted, the Accreditor shall decide what, if any, assessment procedure is appropriate to determine whether or not the amendment should be granted and shall act accordingly.

§ 280.1013 References to accredited status.

(a) An Accreditor which is proprietor or licensee of a symbol or logo, intended

for use under its accreditation program, shall have a policy governing its use. It shall normally allow an accredited body to refer to its accreditation in certificates, reports, and stationery and publicity material relating to accredited activities.

(b) The Accreditor shall not allow use of its mark or logo in any way which implies that the Accreditor itself approved a product, service or system registered by an accredited body. Where a Facility is registered only with respect to its quality assurance system, the symbol or logo shall not be used on a product or in any other way that may be interpreted as denoting product conformance, as required by § 280.804(d).

(c) The Accreditor shall take suitable action to deal with incorrect reference to the accreditation system, or misleading use of accreditation logos found in advertisements, catalogues, etc. Such action could include corrective action, withdrawal of certificate, publication of the transgression and, if necessary, other legal action.

§ 280.1014 Change in the accreditation.

The Accreditor shall give due notice of any changes it intends to make in its requirements for accreditation. It shall take account of views expressed by interested parties before deciding on the precise form and effective date of the changes. Following a decision on, and publication of, the changed requirements, it shall verify that each accredited Registrar carries out any necessary adjustments to its procedures within such time as, in the opinion of the Accreditor, is reasonable.

§ 280.1015 Appeals, complaints and disputes.

The Accreditor shall keep a record of all appeals, complaints and disputes, and remedial actions relative to accreditation; take appropriate corrective and preventive action; and document the actions taken and assess their effectiveness.

§ 280.1016 Access to records of appeals, complaints and disputes.

The Accreditor shall require each applicant and accredited Registrar to make available to it, when requested, the records of all complaints, appeals and disputes, and subsequent actions.

Requirements for Assessment

§ 280.1020 Application for accreditation.

(a)(1) The Accreditor shall maintain up-to-date as specified in § 280.1010(g)(1), detailed description of the assessment and accreditation procedure, the documents containing the requirements for accreditation, and documents describing the rights and duties of accredited Registrars, and shall provide them to applicants and accredited Registrars. The Accreditor shall require that an accredited Registrar:

(i) Always complies with the relevant provisions of this part;

(ii) Makes all necessary arrangements for the conduct of the assessment, including provision for examining documentation and the access to all areas, records (including internal audit reports) and personnel for the purposes of assessment, surveillance, reassessment and resolution of complaints;

(iii) Only claims that it is accredited with respect to those activities for which it has been granted accreditation;

(iv) Does not use its accreditation in such a manner as to bring the Accreditor into disrepute, and does not make any statement regarding its accreditation which the Accreditor may consider misleading or unauthorized;

(v) Upon suspension or withdrawal of its accreditation, discontinues use of all advertising matter that contains any reference thereto and returns any accreditation documents as required by the Accreditor;

(vi) Does not allow the fact of its accreditation to be used to imply that a product, process, system, or person is approved by the Accreditor, as required by § 280.804(d);

(vii) Ensures that no accreditation document, mark or report, or any part thereof, is used in a misleading manner; and

(viii) In making reference to its accreditation status in communication media such as documents, brochures or advertising, complies with the requirements of the Accreditor.

(2) When the desired scope of accreditation is related to a specific program any necessary explanation shall be provided to the applicant. If requested, additional application information shall be provided to the body.

(b) The Accreditor shall require an official application form, duly completed and signed by a duly authorized representative of the applicant, in which or attached to which:

(1) The scope of the desired accreditation is defined; and

(2) The applicant agrees to comply with the requirements for accreditation and to supply any information needed for its evaluation.

(c) At least the following shall be provided by the applicant prior to the on-site assessment:

(1) The general features of the applicant body, such as corporate entity, name, address, legal status and, where relevant, human and technical resources;

(2) General information concerning the body covered by the application, such as its functions, and its relationship in a larger corporate entity, and its physical locations;

(3) A description of the systems or products it registers and the standards or other normative documents applicable to each; and

(4) A copy of its quality manual and, where required, the associated documentation.

§ 280.1021 Preparation for assessment.

(a) Before proceeding with the assessment, the Accreditor shall conduct, and maintain records of, a review of the request for accreditation to ensure that:

(1) The requirements for accreditation are clearly defined and documented;

(2) Any difference in understanding between the Accreditor and the applicant is resolved; and

(3) The Accreditor has the capability to perform the accreditation service with respect to the scope of the accreditation sought, the location of the applicant's operations, and any special requirements such as the language used by the applicant.

(b) The Accreditor shall prepare a plan for its assessment activities to allow for the necessary arrangements to be made.

(c) The Accreditor shall nominate a qualified audit team to evaluate all material collected from the applicant and to conduct the audit on its behalf. Experts in the areas to be assessed may be attached to the Accreditor's team as advisers.

(d) The applicant shall be informed of the names of the members of the audit team who will carry out the assessment, with sufficient notice to appeal against the appointment of any particular auditors or experts.

(e) The audit team shall be formally appointed and provided with the appropriate working documents. The plan for and the date of the audit shall be agreed upon with the applicant. The mandate given to the audit team shall be clearly defined and made known to the applicant, and shall require the audit team to examine the structure, policies and procedures of the applicant, and confirm that these meet all the requirements relevant to the scope of accreditation, and that the procedures are implemented and are such as to give confidence in the registrations of the applicant.

§ 280.1022 Assessment.

(a) The audit team shall assess all services of the applicant covered by the defined scope against all applicable accreditation requirements.

(b) The Accreditor shall witness fully the on-site activities of one or more assessments or audits conducted by an applicant before an initial accreditation is granted for any function requiring on-site activity by the applicant.

§ 280.1023 Assessment report.

(a) The Accreditor may adopt reporting procedures that suit its needs but, as a minimum, these procedures shall ensure that:

(1) A meeting takes place between the audit team and the applicant's management prior to leaving the premises, at which the audit team provides a written or oral indication on the conformity of the applicant with the particular accreditation requirements and provides an opportunity for the applicant to ask questions about the findings and their basis;

(2) The audit team provides the Accreditor with a report of its findings as to the applicant's conformity to all of the accreditation requirements;

(3) A report on the outcome of the assessment is promptly brought to the applicant's attention by the Accreditor, identifying any nonconformity to be discharged in order to comply with all of the accreditation requirements;

(4) The Accreditor shall invite the applicant to comment on the report and to describe the specific actions taken, or planned to be taken within a defined time, to remedy any nonconformity with the accreditation requirements identified during the assessment, and shall inform the applicant of the need for full or partial reassessment or whether a written declaration to be confirmed during surveillance will be considered adequate;

(5) The report shall contain as a minimum:

(i) The date(s) of the audit(s);

(ii) The name(s) of the person(s) responsible for the report;

(iii) The names and addresses of all sites audited;

(iv) The assessed scope of accreditation or reference thereto;

(v) Comments on the conformity of the applicant with the accreditation requirements and, where applicable, any useful comparisons with the results of previous assessment of the applicant; and

(vi) An explanation of any differences from the information presented to the applicant at the closing meeting.

(b) If the final report authorized by the Accreditor differs from the report referred to in paragraphs (b) (3) and (5) of this section, it shall be submitted to the applicant with an explanation of any differences from the previous report. The report shall take into consideration:

(1) The qualification, experience and authority of the staff encountered;

(2) The adequacy of the internal organization and procedures adopted by the applicant to give confidence in the quality of its services; and

(3) The actions taken to correct identified nonconformities including, where applicable, those identified at previous assessments.

§ 280.1024 Surveillance and reassessment procedures.

(a) The Accreditor shall have an established documented program, consistent with the accreditation granted, for carrying out periodic surveillance and reassessment at sufficiently close intervals to verify that its accredited Registrar continues to comply with the accreditation requirements.

(b) Surveillance and reassessment procedures shall be consistent with those concerning the assessment of the applicant as described in this part.

(c)(1) The Accreditor shall have arrangements to ensure that an accredited Registrar informs it without delay of changes in any aspects of its status or operation that affect its:

(i) Legal, commercial or organizational status;

(ii) Organization and management, for example key managerial staff;

(iii) Policies or procedures, where appropriate;

(iv) Premises; and

(v) Personnel, equipment, facilities, working environment or other resources, where significant.

(2) The accredited Registrar shall also inform the Accreditor of other such matters that may affect activities, or conformance with the requirements, or any other relevant criteria of competence specified by the Accreditor.

Subpart L—Requirements for Registrars

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General

§ 280.1100 Introduction.

This subpart sets out organizational, operational and other requirements that must be met by all Registrars accredited under subparts I or J of this part.

§ 280.1101 Scope.

These are general requirements that must be met by a third-party body registering Facilities.

Note: In some countries, the bodies which verify conformity of quality systems to specified standards are called ''certification bodies,'' in others ''registration bodies,'' in others ''assessment and registration bodies'' or ''certification/registration bodies,'' and in still others ''registrars.'' Reference to such bodies as ''Registrars'' should not be understood to be limiting.

Requirements for Registrars

§ 280.1110 Registrars.

(a) *General provisions.* (1) The policies and procedures under which the Registrar operates shall be non-discriminatory, and they shall be administered in a non-discriminatory manner. Procedures shall not be used to impede or inhibit access by applicants other than as specified in this part.

(2) The Registrar shall make its services accessible to all applicants. There shall not be undue financial or other conditions. Access shall not be conditional upon the size of the applicant body or membership of any association or group, nor shall registration be conditional upon the number of Facilities already registered.

(3) The criteria against which the quality assurance system of an applicant is assessed shall be those outlined in the quality system standards or other normative documents relevant to the function performed. If an explanation is required as to the application of these documents to a specific registration program, it shall be formulated by relevant and impartial committees or persons possessing the necessary technical competence, and published by the Registrar.

(4) The Registrar shall confine its requirements, assessment, and decision on registration to those matters specifically related to the scope of the registration being considered.

(b) *Organization of a Registrar.* The structure of the Registrar shall be such

as to give confidence in its registrations. In particular, the Registrar shall:

(1) Be impartial;

(2) Be responsible for its decisions relating to the granting, maintaining, extending, reducing, suspending and withdrawing of registration;

(3) Identify the management (committee, group, or person) which will have overall responsibility for each of the following:

(i) Performance of assessment and registration as defined in this part;

(ii) Formulation of policy matters relating to the operation of the Registrar;

(iii) Decisions on registration;

(iv) Supervision of the implementation of its policies;

(v) Supervision of the finances of the Registrar; and

(vi) Delegation of authority to committees or individuals, as required, to undertake defined activities on its behalf.

(4) Have documents which demonstrate that it is a legal entity;

(5) Have a documented structure which safeguards impartiality, including provisions to assure the impartiality of the operations of the Registrar. This structure shall enable the participation of all parties significantly concerned in the development of policies and principles regarding the content and functioning of the registration system;

(6) Ensure that each decision on registration is taken by a person or persons different from those who carried out the assessment;

(7) Have rights and responsibilities relevant to its registration activities;

(8) Have adequate arrangements to cover liabilities arising from its operations and/or activities;

(9) Have the financial stability and resources required for the operation of a registration system;

(10) Employ a sufficient number of personnel having the necessary education, training, technical knowledge, and experience for performing registration functions relating to the type, range, and volume of work performed, under a responsible senior executive;

(11) Have a quality system, as outlined in § 280.1110(d), giving confidence in its ability to operate a registration system for Facilities;

(12) Have policies and procedures that distinguish between registration and any other activities in which the Registrar is engaged;

(13) Together with its senior executive and staff, be free from any commercial, financial, and other pressures which might influence the results of the registration process;

(14) Have formal rules and structures for the appointment and operation of any committees which are involved in the registration process; such committees shall be free from any commercial, financial, and other pressure that might influence decisions;

(15) Ensure that activities of related bodies do not affect the confidentiality, objectivity, or impartiality of its registrations and shall not offer or provide, directly or indirectly, those services that it registers others to perform, consulting services to obtain or maintain registration, or services to design, implement, or maintain quality systems;

(16) Have policies and procedures for the resolution of complaints, appeals, and disputes received from fastener manufacturers or other parties about the handling of registration or any other related matters;

(17) Have a structure where members are chosen to provide a balance of interests, where no single interest predominates; and

(18) Assure that other products, processes, or services that may be offered, directly or indirectly, do not compromise confidentiality or the objectivity or impartiality of its registration process and decisions.

(c) *Subcontracting.* (1) When a Registrar decides to subcontract work related to registration (e.g. audits) to an external body or person, a properly documented agreement covering the arrangements, including confidentiality and conflicts of interest, shall be drawn up. The Registrar shall:

(i) Take full responsibility for such subcontracted work and maintain its responsibility for granting, maintaining, extending, reducing, suspending, or withdrawing registration;

(ii) Ensure that the subcontracted body or person is competent and complies with the applicable provisions of this part, including section 280.7, and is not involved, either directly or through its employer, with the design, implementation, or maintenance of a quality system in such a way that impartiality could be compromised; and

(iii) Obtain the consent of the applicant or fastener manufacturer whose Facility is registered.

(2) Requirements in paragrphs (c) (1) and (2) of this section are also relevant, by extension, when a Registrar uses, for granting its own registration, work provided by another Registrar with which it has signed an agreement.

(d) *Quality system.* (1) The management of the Registrar with executive responsibility for quality shall define and document its policy for quality, including objectives for quality and its commitment to quality. The management shall ensure that this policy is understood, implemented, and maintained at all levels of the organization.

(2) The Registrar shall operate a quality system in accordance with the relevant elements of this part and appropriate to the type, range, and volume of work performed. This quality system shall be documented and the documentation shall be available for use by the staff of the Registrar.

(3) The Registrar shall ensure effective implementation of the documented quality system procedures and instructions.

(4) The Registrar shall designate a person with direct access to its highest executive level who, irrespective of other responsibilities, shall have defined authority to ensure that a quality system is established, im plemented, and maintained in accordance with this part, and report on the performance of the quality system to the management of the Registrar for review and as a basis for improvement of the quality system.

(5) The quality system shall be documented in a quality manual and associated quality procedures and the quality manual shall contain or refer to at least the following:

(i) A quality policy statement;

(ii) A brief description of the legal status of the Registrar, including the names of its owners, if applicable, and, if different, the names of the persons who control it;

(iii) The names and qualifications, experience, and terms of reference of the senior executive and other certification/registration personnel, affecting the quality of the certification/registration function;

(iv) An organization chart showing lines of authority, responsibility, and allocation of functions stemming from the senior executive and, in particular, the relationship between those responsible for the assessment and those taking decisions regarding registration;

(v) A description of the organization of the registration body, including details of the management (committee, group, or person), its constitution, terms of reference and rules of procedure;

(vi) The policy and procedures for conducting management reviews;

(vii) Administrative procedures including document control;

(viii) The operational and functional duties and services pertaining to quality, so that the extent and limits of each person's responsibility are known to all concerned;

(ix) The policy and procedures for the recruitment and training of registration

body personnel (including auditors) and monitoring their performance;

(x) A list of its subcontractors and details of the procedure for assessing, recording, and monitoring their competence;

(xi) Its procedures for handling nonconformities and for assuring the effectiveness of any corrective actions taken;

(xii) The policy and procedures for implementing the registration process, including:

(A) The conditions for issue, retention, and withdrawal of registration documents;

(B) Checks of the use and application of documents used in the registration of quality systems;

(C) The procedures for assessing and registering fastener manufacturers' quality systems as employed in particular Facilities; and

(D) The procedures for surveillance and reassessment of registered Facilities.

(xiii) The policy and procedures for dealing with appeals, complaints, and disputes; and

(xiv) The procedures for conducting internal audits based on the provisions described in appropriate international documentation.

(e) *Conditions for granting, maintaining, extending, reducing, suspending, and withdrawing registration.* (1) The Registrar shall specify the conditions for granting, maintaining, reducing, and extending registration and the conditions under which registration may be suspended or withdrawn, partially or in total, for all or part of the Facility's scope of registration. In particular, the Registrar shall require the fastener manufacturer to notify it promptly of any intended changes to the quality assurance system or other changes which may affect conformity.

(2) The Registrar shall require the fastener manufacturer to have a documented quality system which conforms to applicable quality system standards or other normative documents.

(3) The Registrar shall have procedures to grant, maintain, withdraw and, if applicable, suspend registration; to extend or reduce the scope of registration; and to conduct reassessment in the event of changes significantly affecting the activity and operation of the Facility (such as change of ownership, changes in personnel or equipment), or if analysis of a complaint or any other information indicates that the registered fastener Facility no longer complies with the requirements of the Registrar.

(4) The Registrar shall have documented procedures which shall be made available on request for:

(i) Initial assessment and for the surveillance and reassessment of a fastener manufacturer's quality assurance system as employed in a particular Facility

(ii) Continuing conformity with relevant requirements; and for verifying and recording that a fastener manufacturer takes corrective action on a timely basis to correct all nonconformities; and

(iii) Identifying and recording nonconformities and the need for corrective action by fastener manufacturers on a timely basis for such items as incorrect references to the registration or misleading use of registration information.

(f) *Internal audits and management reviews.* (1) The Registrar shall conduct periodic internal audits covering all procedures in a planned and systematic manner, to verify that the quality assurance system is implemented and is effective. The Registrar shall ensure that personnel responsible for the area audited are informed of the outcome of the audit; corrective action is taken in a timely and appropriate manner; and the results of the audit are recorded.

(2) The top management of the Registrar shall review its quality system at defined intervals sufficient to ensure its continuing suitability and effectiveness in satisfying the requirements of this part and the stated quality policy and objectives. Records of such reviews shall be maintained.

(g) *Documentation.* (1) The Registrar shall document, update at regular intervals, and make available through publications, electronic media, or other means, on request

(i) Information about the authority under which the Registrar operates;

(ii) A documented statement of its registration system including its rules and procedures for granting, maintaining, extending, reducing, suspending, and withdrawing registration;

(iii) Information about the assessment and registration process;

(iv) A description of the means by which the Registrar obtains financial support, and general information on the fees charged to applicants and fastener manufacturers whose Facilities have been registered;

(v) A description of the rights and duties of applicants and fastener manufacturers whose Facilities have been registered, including requirements, restrictions, or limitations on the use of the Registrar's logo and on the ways of referring to the registration granted;

(vi) Information on procedures for handling complaints, appeals and disputes; and

(vii) A directory of registered Facilities, including their locations, describing the scope of registration granted to each.

(2) The Registrar shall establish and maintain procedures to control all documents and data that relate to its registration functions. These documents shall be reviewed and approved for adequacy by appropriately authorized and competent personnel prior to issuing any documents following initial development or any subsequent amendment or change being made. A listing of all appropriate documents with the respective issue and/or amendment status identified shall be maintained. The distribution of all such documents shall be controlled to ensure that the appropriate documentation is made available to personnel of the Registrar or of the fastener manufacturer whose Facility is registered, when required to perform any function relating to the activities of an applicant or registered Facility.

(h) *Records.* (1) The Registrar shall maintain a record system to suit its particular circumstances and to comply with this part. The records shall demonstrate that the registration procedures have been effectively fulfilled, particularly with respect to application forms, assessment reports, and other documents relating to granting, maintaining, extending, reducing, suspending, or withdrawing registration. The records shall be identified, managed and disposed of in such a way as to ensure the integrity of the process and confidentiality of the information. The records shall be kept for a period of five years.

(2) The Registrar shall have a policy and procedures for retaining records for a period of five years. The Registrar shall have a policy and procedures concerning access to these records consistent with paragraph (h)(1) of this section.

(i) *Confidentiality.* (1) The Registrar shall have adequate arrangements, consistent with applicable laws to safeguard confidentiality of the information obtained in the course of its registration activities at all levels of its organization, including committees and external bodies or individuals, acting on its behalf.

(2) Except as required in this part, information about a particular product, quality assurance system, Facility, or fastener manufacturer shall not be dis closed to a third party without the written consent of the fastener manufacturer.

§ 280.1111 Registrar personnel.

(a) *General provisions.* (1) The personnel of the Registrar involved in registration shall be competent for the functions they perform.

(2) Information on the relevant qualifications, training and experience of each member of the personnel involved in the registration process shall be maintained by the Registrar. Records of training and experience shall be kept up to date.

(3) Clearly documented instructions shall be available to the personnel describing their duties and responsibilities. These instructions shall be maintained up to date.

(b) *Qualification criteria for auditors and technical experts.* (1) In order to ensure that assessments are carried out effectively and uniformly, the minimum relevant criteria for competence shall be defined by the Registrar.

(2) Auditors shall meet the requirements of the appropriate international documentation. For the assessment of a quality system, the relevant guidelines for auditing and the criteria for auditors are those defined in the appropriate international documentation.

(3) Technical experts are not required to comply with the requirements for auditors, and guidance on their personal attributes may be obtained the appropriate international documentation.

(c) *Selection procedure.* (1) The Registrar shall have a procedure for selecting auditors and, if applicable, technical experts on the basis of their competence, training, qualifications, and experience, and for initially assessing the conduct of auditors and technical experts during assessment and subsequently monitoring the performance of auditors and technical experts.

(2) When selecting the audit team to be appointed for a specific assessment, the Registrar shall ensure that the skills brought to each assignment are appropriate. The team shall:

(i) Be familiar with the Fastener Quality Act and its implementing regulations, registration procedures and registration requirements;

(ii) Have a thorough knowledge of the relevant assessment method and assessment documents;

(iii) Have appropriate technical knowledge of the fastener technology for which registration is sought and where relevant with associated procedures and their potential for failure (technical experts who are not auditors may fulfill this function);

(iv) Have a degree of understanding sufficient to make a reliable assessment of the competence of the Facility to provide products, processes or services in its registered scope;

(v) Be able to communicate effectively, both in writing and orally, in the required languages;

(vi) Be free from any interest that might cause team members to act in other than an impartial or non-discriminatory manner, for example:

(A) Audit team members or their organization shall not have provided consulting services to the applicant or fastener manufacturer whose Facility is registered which compromise the registration process and decision; and

(B) In accordance with the directives of the Registrar, the audit team members shall inform the Registrar, prior to the assessment, about any existing, former or envisaged link between themselves or their organization and the fastener manufacturer whose Facility is to be assessed.

(d) *Contracting of assessment personnel.* The Registrar shall require the personnel involved in the assessment to sign a contract or other document by which they commit themselves to comply with the rules defined by the Registrar, including those relating to confidentiality and those relating to independence from commercial and other interests, and any prior and/or present link with the fastener manufacturers whose Facilities are to be assessed. The Registrar shall ensure that, and document how, any subcontracted assessment personnel satisfy all the requirements for assessment personnel outlined in this subpart.

(e) *Assessment personnel records.* (1) The Registrar shall possess and maintain up-to-date records on assessment personnel, consisting of:

(i) Name and address;

(ii) Affiliation and position held in the organization,

(iii) Educational qualifications and professional status;

(iv) Experience and training in each field of competence of the Registrar;

(v) Date of most recent updating of records; and

(vi) Performance appraisal.

(2) The Registrar shall ensure and verify that any subcontracted body maintains records which satisfy the requirements of this part, of assessment personnel who are subcontracted to the Registrar.

(f) *Procedures for audit teams.* Audit teams shall be provided with up-to-date assessment instructions and all relevant information on registration arrangements and procedures.

§ 280.1112 Changes in the registration requirements.

The Registrar shall give due notice of any changes it intends to make in its requirements for registration. It shall take account of views expressed by the interested parties before deciding on the precise form and effective date of the changes. Following a decision on, and publication of, the changed requirements, it shall verify that each fastener manufacturer whose Facility is registered carries out any necessary adjustments to its procedures within such time as, in the opinion of the Registrar, is reasonable.

§ 280.1113 Appeals, complaints and disputes.

Appeals, complaints and disputes brought before the Registrar by fastener manufacturers or other parties shall be subject to the procedures of the Registrar. The Registrar shall keep a record of all appeals, complaints and disputes, and remedial actions relative to registration; take appropriate corrective and preventive action; and document the actions taken and assess their effectiveness.

Requirements for Registration

§ 280.1120 Application for registration.

(a)(1) The Registrar shall maintain up-to-date as specified in § 280.1110(g)(1), a detailed description of the assessment and registration procedure, the documents containing the requirements for registration and documents describing the rights and duties of fastener manufacturers whose Facilities are registered, and shall provide them to applicants and those fastener manufacturers. The Registrar shall require that a fastener manufacturer whose Facility is registered:

(i) Always complies with the relevant provisions of this part;

(ii) Makes all necessary arrangements for the conduct of the assessment, including provision for examining documentation and the access to all areas, records (including internal audit reports) and personnel for the purposes of assessment, surveillance, reassessment, and resolution of complaints;

(iii) Only claims that its Facility is registered with respect to those activities for which it has been granted registration;

(iv) Does not use the registration in such a manner as to bring the Registrar into disrepute, and does not make any statement regarding its registration which the Registrar may consider misleading or unauthorized;

(v) Upon suspension or withdrawal of the registration (however determined),

discontinues use of all advertising matter that contains any reference thereto and returns any registration documents as required by the Registrar;

(vi) Uses registration only to indicate that the quality assurance system as employed in its Facility is in conformity with specified standards or other normative documents, and does not use the registration to imply that a product or service is approved by the Registrar, as required by section 280.804;

(vii) Ensures that no registration document, mark or report, or any part thereof, is used in a misleading manner; and

(viii) In making reference to the registration in communication media such as documents, brochures, or advertising, complies with the requirements of the Registrar.

(2) When the desired scope of registration is related to a specific program, any necessary explanation shall be provided to the fastener manufacturer. If requested, additional application information shall be provided to the fastener manufacturer.

(b) The Registrar shall require an official application form, duly completed and signed by a duly authorized representative of the applicant fastener manufacturer in which or attached to which:

(1) The scope of the desired registration is defined; and

(2) The applicant agrees to comply with the requirements for registration and to supply any information needed for its evaluation.

(c)(1) At least the following information shall be provided by the applicant prior to the on-site assessment:

(i) The general features of the applicant, such as corporate entity, name, addresses, legal status and, where relevant, human and technical resources;

(ii) General information concerning the quality system and the activities it covers;

(iii) A description of the systems to be registered and the standards or other normative documents applicable to each; and

(iv) A copy of its quality manual and, where required, the associated documentation.

(2) The information gathered from the application documentation and the quality manual review may be used for the preparation of the on-site assessment and shall be treated with appropriate confidentiality.

§ 280.1121 Preparation for assessment.

(a) Before proceeding with the assessment the Registrar shall conduct, and maintain records of, a review of the request for registration to ensure that:

(1) The requirements for registration are clearly defined, documented, and understood;

(2) Any difference in understanding between the Registrar and the applicant is resolved; and

(3) The Registrar has the capability to perform the registration service with respect to the scope of the registration sought, the location of the applicant's operations, and any special requirements such as the language used by the applicant.

(b) The Registrar shall prepare a plan for its assessment activities to allow for the necessary arrangements to be made.

(c) The Registrar shall nominate a qualified audit team to evaluate all material collected from the applicant and to conduct the audit on its behalf. Experts in the areas to be assessed may be attached to the Registrar's team as advisers.

(d) The fastener manufacturer shall be informed of the names of the members of the audit team who will carry out the assessment, with sufficient notice to appeal against the appointment of any particular auditors or experts.

(e) The audit team shall be formally appointed and provided with the appropriate working documents. The plan for and the date of the audit shall be agreed to by the fastener manufacturer. The mandate given to the audit team shall be clearly defined and made known to the fastener manufacturer, and shall require the audit team to examine the structure, policies, and procedures of the Facility and the quality assurance system it employs, and confirm that these meet all the requirements relevant to the scope of registration, and that the procedures are implemented and are such as to give confidence in the products, processes, or services of the Facility being evaluated.

§ 280.1122 Assessment.

The audit team shall assess the quality assurance system, employed in the Facility being evaluated, covered by the defined scope against all applicable registration requirements.

§ 280.1123 Assessment report.

(a) The Registrar may adopt reporting procedures that suit its needs but, as a minimum, these procedures shall ensure that:

(1) A meeting takes place between the audit team and the fastener manufacturer's management prior to leaving the premises, at which the audit team provides a written or oral indication regarding the conformity of the quality assurance system, as employed in particular Facility, with the particular registration requirements and provides an opportunity for the fastener manufacturer to ask questions about the findings and their basis;

(2) The audit team provides the Registrar with a report of its findings as to the conformity of the quality assurance system, as employed in the particular Facility, with all of the registration requirements;

(3) A report on the outcome of the assessment is promptly brought to the fastener manufacturer's attention by the Registrar, identifying any nonconformity to be discharged in order to comply with all of the registration requirements;

(4) The Registrar shall invite the fastener manufacturer to comment on the report and to describe the specific actions taken, or planned to be taken within a defined time, to remedy any nonconformity with the registration requirements identified during the assessment of its quality assurance system, as employed in the particular Facility, and shall inform the fastener manufacturer of the need for full or partial reassessment of its quality assurance system or whether a written declaration to be confirmed during surveillance will be considered adequate;

(5) The report shall contain as a minimum:

(i) The date(s) of the audit(s);

(ii) The name(s) of the person(s) responsible for the report;

(iii) The names and addresses of the Facility audited;

(iv) The assessed scope of registration or reference thereto, including reference to the standard(s) applied;

(v) Comments on the conformity of the quality assurance system, as employed in the particular Facility, with the registration requirements, with a clear statement of nonconformity and, where applicable, any useful comparison with the results of previous assessments of the quality assurance system, as employed in that particular Facility; and

(vi) An explanation of any differences from the information presented to the body at the closing meeting.

(b) If the final report authorized by the Registrar differs from the report referred to in paragraphs (a) (3) and (5) of this section, it shall be submitted to the fastener manufacturer with an explanation of any differences from the previous report. The report shall take into consideration:

(1) The qualification, experience, and authority of the staff encountered;

(2) The adequacy of the internal organization and procedures adopted by the applicant body to give confidence in the quality assurance system, as employed in the particular Facility; and

(3) The actions taken to correct identified nonconformities including, where applicable, those identified at previous assessments.

§ 280.1124 Decision on registration.

(a) The decision whether or not to register a fastener Facility shall be taken by the Registrar on the basis of the information gathered during the registration process and any other relevant information. Those who make the registration decision shall not have participated in the audit.

(b) The Registrar shall not delegate authority for granting, maintaining, extending, reducing, suspending, or withdrawing registration to an outside person or body.

(c) The Registrar shall provide to each fastener manufacturer whose Facility is registered, registration documents such as a letter or a certificate signed by an officer who has been assigned such responsibility. These documents shall identify, for the fastener manufacturer and the particular Facility covered by the registration:

(1) The name and addresses;

(2) The scope of registration granted, including as appropriate:

(i) The quality system standards and/or other normative documents to which quality systems are registered;

(ii) The product, process, or service categories; and, if appropriate,

(iii) Regulatory requirements, product standards, or other normative documents against which products are supplied.

(3) The effective date of registration and the term for which the registration is valid.

(d) Any application for amendment to the scope of a previously granted registration shall be processed by the Registrar. The Registrar shall decide what, if any, assessment procedure is appropriate to determine whether or not the amendment should be granted and shall act accordingly.

§ 280.1125 Surveillance and reassessment procedures.

(a) The Registrar shall carry out periodic surveillance and reassessment at sufficiently close intervals to verify that its registered Facilities continue to comply with the registration requirements. The period involved cannot be greater than one year.

(b) Surveillance and reassessment procedures shall be consistent with those concerning the assessment of the Facility as described in this part.

§ 280.1126 Use of certificates and logos.

(a) The Registrar shall exercise proper control over ownership, use and display of its quality system registration mark and logos.

(b) If the Registrar confers the right to use a symbol or logo to indicate registration of a Facility, the fastener manufacturer may use the specified symbol or logo only as authorized in writing by the Registrar. This symbol or logo shall not be used on a product or in a way that may be interpreted as denoting product conformity.

(c) The Registrar shall take suitable action to deal with incorrect references to the registration system or misleading use of certificates and logos found in advertisements, catalogs, etc. Such action could include corrective action, withdrawal of certificate, publication of the transgression and, if necessary, other legal action.

§ 280.1127 Access to records of complaints to fastener manufacturers.

The Registrar shall require each fastener manufacturer whose Facility is registered to make available to the Registrar, when requested, the records of all complaints and corrective action taken in accordance with the requirements of the quality system standards or other normative documents.

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Monday
September 8, 1997

Part III

Department of Labor

Pension and Welfare Benefits Administration

29 CFR Part 2560

Claims Procedures for Employee Benefit Plans; Proposed Rule

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2560

Claims Procedures for Employee Benefit Plans

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Request for information.

SUMMARY: This document requests information from the public concerning the advisability of amending the existing regulation under the Employee Retirement Income Security Act of 1974 (ERISA) that establishes minimum requirements for employee benefit plan claims procedures. The term ''claims procedure'' refers to the process that employee benefit plans must provide for participants and beneficiaries who seek to obtain pension or welfare plan benefits, including requests for medical treatment or services, consideration of claims, and review of denials of claims by plans. The primary purpose of this notice is to obtain information to assist the Department of Labor (the Department) in evaluating (1) The extent to which the current claims procedure regulation assures that group health plan participants and beneficiaries are provided with effective and timely means to file and resolve claims for health care benefits, and (2) whether and in what way the existing minimum requirements should be amended with respect to group health plans covered by ERISA. The furnished information also will assist the Department in determining whether the regulation should be amended with respect to pension plans covered by ERISA and in developing legislative proposals to address any identified deficiencies relating to the claims procedures that cannot be addressed by amending the current regulation.

DATES: Written comments must be submitted to the Department of Labor on or before November 7, 1997.

ADDRESSES: Comments (preferably, at least six copies) should be addressed to the Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Room N–5669, U.S. Department of Labor, Washington, D.C. 20210. Attention: Claims Procedure RFI. All comments received will be available for public inspection at the Public Disclosure Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Ave., N.W., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Jeffrey J. Turner or Susan G. Lahne, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, D.C. 20210, telephone (202) 219–7461, or Cynthia Caldwell Weglicki, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, D.C., telephone (202) 219–4600, ext. 106. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

A. Background

The Department's regulation, published in 1977, was drafted in response to concerns about plan practices prior to the enactment of ERISA, particularly with respect to participants' lack of information about claims procedures generally. This regulation makes no distinction between pension and health care plans. In the intervening years, dramatic changes in health care delivery have raised many issues concerning access, coverage, and quality of care and have resulted in various legislative responses. In addition to numerous initiatives at the State government level, a number of Federal laws have been enacted to address these issues. The Health Insurance Portability and Accountability Act of 1996, the Newborns and Mothers Health Protection Act of 1996, and the Mental Health Parity Act of 1996 are recent examples. In addition, on September 5, 1996, President Clinton signed Executive Order 13017 establishing the Advisory Commission on Consumer Protection and Quality in the Health Care Industry. More recently, the Balanced Budget Act of 1997 (P.L. 105–33) contains a number of provisions relating to managed care in connection with the Medicare and Medicaid programs.

One of the most important changes to occur has been the growth of managed health care delivery systems.[1] These arrangements adopt various measures to control costs and increase efficiency. For example, they may impose limits or conditions on an individual's choice of physicians and often require prior approval before an individual can obtain, or obtain reimbursement for, hospital care or medical services provided by a specialist. Both fee-for-service and health maintenance organizations (HMOs), as well as preferred provider and other types of delivery systems, may rely on managed care measures. As a result of the prevalence of managed care measures, fair and expeditious resolution of benefits disputes has become an increasingly important issue. Managed care measures magnify the significance of the procedures that surround the decision whether medical services will be made available to a participant or beneficiary, and suggest that the Department should consider whether its current regulatory minimum standards for such procedures are sufficient to ensure that decisions on the availability of medical care are made in a manner that adequately protects the interests of the individual seeking benefits.

At the same time, technological advances in business communications in the last twenty years facilitate more rapid communications and decision-making by plans and participants. The Department's regulation may no longer reflect current plan practices with respect to these aspects of filing and reviewing benefit claims. The Department seeks information about current practices in this area. Along the same lines, market practices such as accreditation by various professional and consumer groups have become important private regulatory forces in the managed care arena. Publication of model acts, such as the Utilization Review Model Act and the Health Carrier Grievance Procedure Model Act developed by the National Association of Insurance Commissioners (NAIC), reflect the importance of time-sensitive review procedures. The NAIC model acts have served as the basis for State legislation to provide procedural protections, including expedited review of claims, to individuals who receive medical benefits through health insurance contracts that incorporate managed care arrangements.

The Department is not alone in its concern for timely resolution of requests for medical treatment from group health plans. The Health Care Financing Administration (HCFA) has recently published a final regulation establishing an expedited process in certain circumstances for Medicare beneficiaries enrolled in managed care entities such as health maintenance organizations.[2] The HCFA regulation requires that managed care entities establish an expedited review process in situations where the time required for

[1] As used in this document, the term ''managed care delivery systems'' includes any measures taken by medical practitioners, insurers, or group health plans to control costs by limiting access to medical services.

[2] This regulation was published as a final rule with a request for comments, 62 FR 23368 (April 30, 1997). The regulation amends a prior regulation codified at 42 CFR § 417.600–620.

the standard review process could seriously jeopardize the life or health of the Medicare beneficiary or the beneficiary's ability to regain maximum function. The rule also provides that a decision to discontinue services that are currently being provided may also be subject to the expedited review process. In the preamble to the regulation, HCFA indicates that it has drawn on the NAIC model grievance act in developing the provisions of the review procedure. As discussed below in section C., Issues Under Consideration, the Department believes that the HCFA regulation and the NAIC model acts may serve as the basis for considering whether, and in what respects, the minimum standards set forth in the ERISA benefit claims procedure regulation should be amended.

B. Current ERISA Regulation

Section 503 of ERISA, 29 U.S.C. § 1133, provides that, in accordance with regulations promulgated by the Secretary of Labor (the Secretary), each employee benefit plan must provide ''adequate notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied.'' The notice must set forth the specific reasons for the denial and must be written in a manner calculated to be understood by the claimant. Each plan must also afford ''a reasonable opportunity'' for any participant or beneficiary whose claim has been denied to obtain ''a full and fair review'' of the denial by the appropriate named fiduciary of the plan.

The Department has issued a regulation pursuant to the above authority that establishes ''certain minimum requirements for employee benefit plan procedures pertaining to claims.'' 29 CFR § 2560.503–1(a). Generally speaking, the following requirements apply. The claims procedure of an employee benefit plan covered by ERISA (hereinafter referred to as an ERISA plan) must be described in the plan's summary plan description. The procedure must not contain any provision or be administered in any way that would unduly inhibit the initiation or processing of claims. Participants must be informed in writing and in a timely fashion of applicable time limits for appeals and responses.

More specifically, the regulation provides that claimants must be informed in writing ''within a reasonable period of time'' if a claim is partially or wholly denied. 29 CFR § 2560.503–1(e)(1). For this purpose, the regulation defines a period of time in excess of 90 days after receipt of the claim as unreasonable, unless ''special circumstances'' require an extension of time for processing. In that case, an extension of an additional 90-day period is available provided that the claimant receives notice of the extension describing the special circumstances prior to the end of the original 90-day period. The notice of a denial of a claim for benefits must be written in a manner calculated to be understood by the claimant and must contain (1) specific reason(s) for the denial, (2) reference to plan provisions on which the denial is based, (3) a description of any additional material necessary to perfect the claim and why it is necessary, and (4) information about how to submit the claim for review. If the notice is not provided in this manner, the claim for benefits is deemed to be denied.

The regulation also requires that every plan establish a review procedure providing a ''reasonable opportunity'' to appeal denied claims to an appropriate named fiduciary or designee. The appeal must afford ''a full and fair review of the claim and its denial.'' 29 CFR § 2560.503–1(g)(1). Minimum requirements for the review procedure include the right to request a review by a written application from the claimant, the right to review pertinent documents, and the right to submit issues and comments in writing. A claimant must have at least 60 days after receipt of the denial in which to request a review. A decision on the review must ordinarily be made within 60 days after the request for a review, unless special circumstances (such as the need to hold a hearing if the plan provides for a hearing) require an extension of time. However, the decision may not be delayed more than 120 days after receipt of the request for review. Special rules provide longer periods of time for plans whose named fiduciary is a group, such as a board of trustees, that holds regularly scheduled meetings at least quarterly. In that case, the review decision must be made by the scheduled time of the next meeting, unless the request for review is received within 30 days prior to that scheduled meeting, in which case the decision is due no later than the date of the group's second successive meeting, with a possible extension to the date of the third meeting if there are special circumstances. 29 CFR § 2560.503–1(h)(1)(ii). As with the initial denial, the decision on review must be in writing, include specific reasons for the decision and references to plan provisions on which the decision is based, and be written in a manner calculated to be understood by the claimant. If no review decision is provided within the time frames specified, the claim is deemed denied.

Under the regulations, plans established pursuant to collective bargaining agreements are not treated differently from other plans, except that they are deemed to comply with the regulatory standards for reviewing denied claims if the collective bargaining agreement pursuant to which the plan is established either contains or incorporates by reference provisions concerning the filing and disposition of benefit claims and a grievance and arbitration procedure for handling denied claims. Participants in plans under which benefits are provided or administered by State-regulated insurance organizations may file claims for benefits, obtain decisions and obtain review of denials through those organizations, but the minimum standards otherwise remain the same. The regulation excludes from its scope employee benefit plans providing only apprenticeship training benefits.

Claims procedures with respect to benefits provided through a qualified HMO, as defined in the Public Health Service Act, 42 U.S.C. § 300e–9(d), are deemed to satisfy the minimum ERISA regulatory requirements if they satisfy section 1301 of the Public Health Service Act (42 U.S.C. § 300e) and the regulations thereunder. 29 CFR § 2560.503–1(j). The regulation addressing claims procedures for federally qualified HMOs is codified in 42 CFR § 417.124.[3] The pertinent provisions of the Public Health Service Act regulations require that each qualified HMO prepare a written description of, among other things, the procedures to be followed in obtaining benefits, a description of circumstances under which benefits may be denied, and grievance procedures. 42 CFR § 417.124(b). Grievance procedures must be ''meaningful'' and must ensure that complaints are transmitted in a timely manner to appropriate decision makers who have authority to take corrective action. Appropriate action in response to grievances is to be taken promptly, with notice to concerned parties of the

[3] 42 CFR § 417.124 does not relate to the requirements HMOs must meet in order to maintain a contract with the Health Care Financing Administration through which health care benefits are provided to Medicare beneficiaries. Section 1876 of title XVIII of the Social Security Act (42 U.S.C. 1395mm) lists those requirements. Regulations implementing the benefit request and benefit review rights of Medicare beneficiaries who participate in managed care delivery systems are found at 42 CFR § 417.600 through § 417.638. This RFI does not involve benefit review procedures for Medicare beneficiaries.

results of the HMO's investigation. 42 CFR § 417.124(g).

C. Issues Under Consideration

Questions have been raised with respect to whether the minimum standards provided in the Department's regulation adequately assure timely and appropriate recourse for employee benefit plan participants and beneficiaries making requests for benefits, or seeking review of benefit claims that have been denied in whole or in part. Although issues that have arisen in the context of group health plans have provided the primary impetus to these questions, section 503 of ERISA and the Department's regulation at 29 CFR § 2560.503–1 apply to both employee welfare benefit plans (the category that includes group health plans) and employee pension benefit plans. The Department is seeking comments concerning the nature of existing benefit determination and review practices of plans and whether the Department's current regulation is adequate to protect the interests of both pension and welfare benefit plan participants and beneficiaries.

The Department is aware that, under current practices, entities that are involved in providing health care employ a variety of terms to describe the process by which an individual eligible for health care services seeks benefits or seeks review of a decision to limit or deny health care treatment or services. Even where the procedural steps are similar, entities may use different terminology for the same procedural step.[4] As part of this RFI, the Department is seeking information as to whether and how it should address the diversity in terminology that is used to describe the procedural protections afforded individuals.

In order to assist interested parties in responding, this document contains a list of specific questions designed to elicit information that the Department believes would be especially helpful in determining whether and how to develop a notice of proposed rulemaking. The Department requests that, in addressing the specific questions in this document, responses refer to the question number as listed in the RFI. The questions listed by the Department may not address all issues relevant to claims procedures. The Department further invites interested parties to submit comments on other aspects of the claims process that they believe are pertinent to the Department's consideration of claims procedures in employee benefit plans covered by title I of ERISA.

In the individual questions below, the following terms have specific meanings. A ''claim'' is a request for a plan benefit by a participant or beneficiary. A ''claimant'' is a participant or beneficiary who has or intends to file a claim. A ''claims procedure'' is the set of rules or requirements by which a claim is filed and resolved under the plan. A ''review'' or ''appeal'' is the next level or levels of claims resolution under the plan after the initial decision occurs or is deemed to have occurred.

Request for Information

Current Practices

1. What information is provided to claimants when requests for services are denied? What are plan practices generally where the plan or a service provider must give prior approval before a participant or beneficiary can obtain certain types of medical treatment?

2. What time frames are typical in ERISA plan claims processes for initial determination and for review of a denied claim? Do plans have different time frames for health care benefits that require prior approval? Do plans maintain special procedures for processing such claims if they involve ''urgent'' or emergency care?

3. When and under what circumstances do plans hire physicians who are not affiliated with the plan to provide independent opinions in connection with a benefit claim? What weight do plans give to the outside opinion?

4. Do plans provide claims reviewers financial incentives based on the percentage of claims denied? Are there compensation arrangements that might influence the reviewers' conclusions? If yes, what are they?

5. The Department's ERISA claims procedure regulation provides that a claimant seeking review of a denial ''may review pertinent documents.'' 29 CFR § 2560.503–1(g)(ii). The preamble to the regulation explains that ''[a]s part of the review the participant must be allowed to see all plan documents and other papers which affect the claim.'' 42 FR 27426 (May 27, 1977). What do plans consider to be examples of pertinent documents or other papers that might affect a claim for benefits? Is there some utility to permitting participants to review pertinent documents prior to filing a claim? Would it reduce claims if a potential claimant could examine documents before filing a claim? What additional costs, if any, would such a requirement impose on plans?

6. When and under what circumstances do plans utilize alternative dispute resolution, arbitration, or similar processes with an outside, independent decision-maker for review of claims denials? Are there any conditions or requirements for electing such processes?

7. Are claimants being asked to pay anything to the plan in order to pursue or perfect their claims review rights? If so, under what circumstances does this occur? Note: The preamble to 29 CFR § 2560.503–1, Part II—Technical Explanation of the Regulation, provides that an otherwise reasonable claims procedure may be deemed to be ''not reasonable if it contains other provisions which unduly inhibit or hamper the initiation or processing of plan claims. For example, a claims procedure may be deemed unreasonable if it requires the payment of a fee as a condition for filing a claim or obtaining review of a denied claim.'' 42 FR 27426 (May 27, 1977).

8. Are there problems making claims processing procedures accessible to plan participants who do not speak English? Should the Department address these problems in a regulation? If so, how?

9. What limits do plans impose on the time within which a participant or beneficiary may file a claim for benefits or may request review? Should the Department adopt minimum standards for filing claims and new minimum standards for requesting review?

10. To what extent are electronic media used to receive or communicate benefit claims information or to process claims? What if any changes to the regulation are necessary to accommodate this?

[4] The Public Health Service Act regulations applicable to federally qualified HMOs require written descriptions of circumstances under which benefits may be denied and written grievance procedures. 42 CFR § 417.124. Regulations promulgated by the Office of Personnel Management relating to both fee-for-service and managed care providers participating in the Federal Employees Health Benefits Plan (FEHBP) use terms such as filing claims for payment or services, reconsideration of claims that have been denied, and review of decisions to deny claims. 5 CFR § 890.105. HCFA's Medicare regulations provide an appeals procedure for Medicare beneficiaries contesting an ''organization determination,'' which, generally speaking, is a decision by a health care provider to deny, terminate, or not pay for medical services that the beneficiary believes are covered under the plan. A ''reconsidered determination'' is the result of a review of the organization determination. The NAIC Health Carrier Grievance Model Act (October 1966) uses the term ''adverse determination'' for a carrier's decision that medical services will be denied, reduced or terminated. The Model Act provides for an appeals procedure to review an adverse determination. The term grievance is defined as a written complaint about the availability or quality of health care services, including, but not limited to adverse determinations. State insurance laws and regulations dealing with health care insurance carriers display a similar variety of terms.

Expedited Claims Procedures

Recently HCFA published a final rule requiring that managed care organizations such as HMOs establish an expedited procedure for Medicare beneficiaries in situations where the longer time frames in the standard review process ''could seriously jeopardize the life or health of the enrollee or the enrollee's ability to regain maximum function.'' 42 CFR § 471.617(b). Expedited review must be completed as quickly as the beneficiary's medical condition requires, i.e., within 24 or 48 hours as appropriate, but in no case longer than 72 hours, absent special circumstances. The Medicare beneficiary, a representative of the beneficiary, or a physician may request expedited review both for the initial request for benefits and for review of decisions to deny or terminate benefits. Any physician, including one who is not affiliated with the plan, may request expedited review on behalf of a Medicare beneficiary, and the plan must accept the physician's decision that expedited review is necessary.

It is the responsibility of the managed care organization to ensure that all Medicare beneficiaries have a complete written explanation of their benefit review rights, of the availability of expedited reviews, of the steps to follow, and of the time limits for each step of the procedures. When a request for benefits is being reviewed after an initial denial, HCFA's regulation requires that managed care organizations provide Medicare beneficiaries with a reasonable opportunity to present evidence and allegations of fact or law related to the issues in dispute, in person as well as in writing. Where the review is expedited, involving a shorter time for decision, the plan must inform Medicare beneficiaries of the conditions for submitting evidence. Medicare regulations provide several levels of review by entities outside the managed care organization. An outside peer review organization provides immediate review of contested decisions to discharge a Medicare beneficiary from the hospital, and if, after the benefit review process is completed, the initial decision to deny the benefit is upheld, an appeal is automatically sent to an independent reviewer under contract with HCFA. In the preamble to the regulation, HCFA also asks for comments concerning (1) guidelines for notice and benefit review rights when the level of services currently being provided to Medicare beneficiaries is being reduced, and (2) when review of a reduction in the level of services should be expedited.

11. Should the Department's regulation require ERISA plans to provide expedited review? If yes, under what circumstances should an expedited review procedure be available?

12. Would the HCFA regulation's expedited review procedure provide an appropriate maximum time frame if ERISA plans were required to adopt expedited review procedures?

13. If ERISA plans were required to adopt an expedited review procedure, how should terms such as ''medical urgency'' be defined? Should the definition of medical urgency for purposes of an expedited procedure be limited to situations where delay could jeopardize life or health or the ability to regain maximum function, as in the HCFA regulation, or should there be some lesser standard, such as intractable pain or temporary inability to perform major life functions such as employment?

14. What additional costs, if any, would be imposed on plans if an expedited claims procedure along the lines of the HCFA regulation or the NAIC model acts were required?

15. The HCFA expedited review procedure permits a Medicare beneficiary, a representative of the Medicare beneficiary, or a physician to request expedited review both for initial benefit requests and for reconsideration of requests that have been denied. The managed care organization decides if the request meets the criteria for expedited treatment. However, any physician, such as a non-plan physician, may request expedited review on behalf of a Medicare beneficiary, and the managed care organization must accept the physician's decision that expedited review is necessary. If ERISA plans were required to adopt some form of expedited review, whose request should initiate the process? Should this authority be restricted to a physician affiliated with the plan, or any physician?

16. Should some claims, such as emergency hospital admissions or hospital discharges, always have expedited review as a matter of course?

17. If some form of expedited review is adopted for ERISA plans, and under the terms of the regulation a claimant is entitled to an expedited review, should the plan administrator be subject to penalties for noncompliance with the procedure?

18. Would an expedited process be subject to overuse or abuse by claimants or physicians? If so, how can this be avoided?

Other Aspects of Reviewing Claims

19. Would the HCFA regulation's system of permitting Medicare beneficiaries or their representatives to present new evidence throughout the benefit review process work for ERISA plans? Should ERISA claimants be allowed to appear and present evidence in person at some levels of the claims review process? What additional costs, if any, would such requirements impose on plans?

20. In what, if any, situations should an ERISA plan service provider be required to continue services at the previous level pending reconsideration of a decision to reduce or terminate services? Should any such requirement affect the maximum time frames for resolution of claims involving such decisions?

21. In contrast to HCFA's Medicare regulation that provides several levels of review by entities outside the managed care organization, ERISA § 503 provides that every plan shall provide ''a full and fair review by an appropriate named fiduciary'' of a decision denying a claim. Do the Department's minimum regulatory standards that implement this requirement provide sufficient assurance of a disinterested hearing? If not, what changes to the existing regulation would assure adequate impartiality in the review process?

22. The Department's regulations at 29 CFR § 2560.503–1(f) require that upon denial, the plan shall provide ''[a]ppropriate information as to the steps to be taken if the participant or beneficiary wishes to submit his or her claim for review.'' The plan's decision on review must include specific written reasons for the decision as well as references to the pertinent plan provisions on which the decision is based. Should plans be required to provide claimants with more information concerning the claims review process than is currently required by the regulation? Should a plan be required to inform participants about the need to exhaust the plan's review process, as suggested by *Kinkead* v. *Southwestern Bell Corporation Sickness & Accident Disability Benefit Plan,* No. 96–2282, 1997 U.S. App. LEXIS 6532 at *5 (8th Cir. April 9, 1997), or about judicial recourse? If so, what information should be provided to participants?

23. Would it be helpful in reducing claims and claims review requests to require plans to provide definitions of terms about which there may be controversy or that may generate a

number of appeals, such as ''emergency services'' or ''urgently needed services,'' as some States have done?

24. Health care plans subject to ERISA's claim procedure regulation use certain terms to describe the process by which participants and beneficiaries seek benefits or seek review of decisions to deny, reduce, or limit benefits under the plan. Other regulators, such as HCFA, and FEHBP, as well as the NAIC model Grievance Act and State insurance laws, utilize different terms to describe similar procedures. Should the Department attempt to conform or cross-reference its claims procedure terminology to that of other regulatory schemes? If so, which one?

Differences Among ERISA Plans

25. Is there a need to establish uniform minimum standards for all ERISA plan claims procedures, including plans providing benefits through federally qualified HMOs? Note: Under the current regulation, federally qualified HMOs are now subject to a different set of regulations under the Public Health Service Act. 29 CFR § 2560.503–1(j); 42 CFR § 417.1 through 417.169. What would be the impact and additional costs, if any, of requiring a uniform standard?

26. Under the Department's current regulation, certain plans established or maintained pursuant to collective bargaining agreements are deemed to comply with the existing regulation provided that provisions concerning filing claims, the initial disposition of claims, and a grievance and arbitration procedure to which denied claims are subject are referenced in the collective bargaining agreement. 29 CFR § 2560.503–1(b)(2). Should claimants in such plans be subject to differing claims procedures depending on the terms of the collective bargaining agreement, or should there be a uniform claims procedure for all ERISA plans? What costs, if any, would a uniform requirement impose?

State Laws

28. Should any new regulation take into consideration State regulatory requirements? If so, which requirements?

Data

29. Do ERISA plans and insurers maintain statistics on pre-authorization requests, patient requests for referrals, claims approvals, denials, appeals and court challenges? What information is collected, how is it used, and to whom is it disclosed?

30. What proportion of pre-authorization requests, patient requests for referrals, and requests for benefits are denied? What proportion of denials are appealed? What proportion of appeals are successful? What proportion of denied appeals are challenged in court by those seeking benefits, and what proportion of court challenges are successful?

31. What proportion of pre-authorization requests, patient requests for referrals and benefits, and what proportion of denials, appeals, and court challenges are associated with questions of medical necessity, benefit coverage, out-of-network care, or the participants' insured status?

32. What dollar amounts are associated with pre-authorization requests, patient requests for referrals, claims, denials, appeals, and court challenges?

33. What is the usual timing associated with pre-authorization requests, patient requests for referrals, claims, denials, appeals, and court challenges?

34. Under Medicare, HCFA has broad authority to require reporting of information. Information concerning appeals and grievances from enrollees in Medicare managed care arrangements are collected by the reconsideration contractor that performs reviews for HCFA, and are reported to HCFA by provider and by type of complaint (i.e., non-plan practitioner, mental health, emergency room, inpatient hospital, etc.). Should ERISA plans be required to maintain a written log of benefit denials and benefit reviews for examination by prospective enrollees? In the alternative, should ERISA plans be required to record and make available to claimants and the Secretary the number of requests for review or appeals by claimants and whether the resolution was favorable or unfavorable to the claimant? What costs, if any, would either requirement impose on plans? Would it be useful and less burdensome to have uniform reporting requirements for Medicare, ERISA and State purposes?

Impact on Small Entities

In responding to the questions above, please address the anticipated annual impact of any proposals on small businesses and small plans (plans with fewer than 100 participants).

All submitted comments will be made a part of the record of proceeding referred to herein and will be available for public inspection.

Signed at Washington, D.C. this 27th day of August, 1997.

Olena Berg,

Assistant Secretary for Pension and Welfare Benefits, U.S. Department of Labor.

[FR Doc. 97–23483 Filed 9–5–97; 8:45 am]

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federal register

Monday
September 8, 1997

Part IV

Nuclear Regulatory Commission

10 CFR Part 50

Definition of Safety-Related Structures, Systems, and Components; Technical Amendments; Final Rule and Proposed Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AF75

Definition of Safety-Related Structures, Systems, and Components; Technical Amendment

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to correct an error in the language of several sections in the regulations governing nuclear power plant licensing that define the term, ''safety-related structures, systems, and components.'' These definitions are inconsistent with the definition in regulations applicable to the siting of nuclear power plants and the Commission's longstanding practice and interpretation of that term.

EFFECTIVE DATE: This direct final rule is effective November 7, 1997, unless significant adverse comments are received by October 8, 1997. If significant adverse comments are received, the effective date will be delayed and timely notice will be published in the **Federal Register**.

ADDRESSES: Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff. Hand deliver comments to 11555 Rockville Pike, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

For information on submitting comments electronically, see the discussion under Electronic Access in the Supplementary Information Section.

Copies of any comments received may be examined at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Geary S. Mizuno, Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, telephone (301) 415–1639,; e-mail GSM@nrc.gov, or Clark Prichard, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6203; e-mail CWP@nrc.gov.

SUPPLEMENTARY INFORMATION: This direct final rule corrects an error in the language of several regulations in 10 CFR Part 50 defining the term, ''safety-related structures, systems, and components,'' which is inconsistent with the concept of ''safety-related structures, systems, and components'' in 10 CFR Part 100, Appendix A.

Currently, ''safety-related structures, systems, and components'' in 10 CFR 50.2 (Definitions) and 10 CFR 50.65 (Maintenance Rule), and ''safety-related electrical equipment'' in 10 CFR 50.49 (Environmental Qualifications Rule) are defined as those structures, systems and components that are relied upon to remain functional during and following design basis events to ensure:

(1) The integrity of the reactor coolant pressure boundary,

(2) The capability to shut down the reactor and maintain it in a safe shutdown condition, and

(3) The capability to prevent or mitigate the consequences of accidents which could result in potential offsite exposures comparable to the applicable guideline exposures set forth in § 50.34(a)(1) or § 100.11 of this chapter, as applicable. (emphasis added)

The corrections would replace the conjunctive word, ''and,'' by the disjunctive word, ''or,'' in these regulations, thereby clarifying that a structure, system, or component which falls into any one (or more) of the three categories set forth in the definition shall be regarded as ''safety-related.'' The correction would also delete the word, ''postulated,'' in the definition of safety-related structures, systems, and components' in 10 CFR 50.2. The corrections do not constitute a change in Commission policy with respect to the scope of structures, systems, and components to be regarded as ''safety-related.'' Rather, the corrections will conform the language in 10 CFR 50.2, 50.49 and 50.65 to the language in 10 CFR Part 100, Appendix A, where the concept of ''safety-related structures, systems and components'' was first incorporated into the Commission's regulations.

In 10 CFR Part 100, Appendix A, which sets forth the seismic design requirements for nuclear power plants, the nuclear power plant applicant must determine the design basis for vibratory ground motion from the ''Safe Shutdown Earthquake'' (SSE). Once the SSE is determined, the nuclear power plant must be designed such that ''if a Safe Shutdown Earthquake occurs, certain structures, systems and components will remain functional.'' *Id.*, Subparagraph VI.(a)(1). The regulation then defines these structures, systems and components which must be designed to withstand the SSE as those necessary to assure:

(i) The integrity of the reactor coolant pressure boundary,

(ii) The capability to shut down the reactor and maintain it in a safe shutdown condition, or

(iii) The capability to prevent or mitigate the consequences of accidents which could result in potential offsite exposures comparable to the guideline exposures of this part.'' (emphasis added).

Id., see also 10 CFR Part 100, Appendix A, Section III, definition of ''safe shutdown earthquake.'' The regulation then denotes these structures, systems and components as ''safety-related.'' 10 CFR Part 100, Appendix A, Subparagraph VI.(a)(1)(second textual paragraph).[1]

The first regulation in 10 CFR Part 50 utilizing the term, ''safety-related'' was 10 CFR Part 50, Appendix B, the introduction of which stated that the requirements of the appendix applied to the ''safety-related functions'' of structures, systems, and components which prevent or mitigate the consequences of postulated accidents. However, Appendix B did not actually include a definition of ''safety-related''. The first regulation in 10 CFR Part 50 to include a definition of ''safety-related structures, systems, and components'' was 10 CFR 50.49. As originally promulgated, § 50.49((b)(1) defined ''safety-related equipment'' as those necessary ''to ensure:

(i) The integrity of the reactor coolant pressure boundary,

(ii) The capability to shut down the reactor and maintain it in a safe condition, and

(iii) The capability to prevent or mitigate the consequences of accidents which could result in potential offsite exposures comparable to the 10 CFR Part 100 guidelines.'' (emphasis added) (48 FR 2729; January 21, 1983).

Thus, the core definition of ''safety-related equipment'' in 10 CFR 50.49 was essentially the same as the definition of ''safety-related structures, systems, and components'' in 10 CFR Part 100, Appendix A. However, nothing in the statements of considerations for the proposed or final 10 CFR 50.49 explains why the ''or'' in the core definition of ''safety related'' was changed to ''and.'' *See* 47 FR 2876; January 20, 1982—proposed rule and 48 FR 2729; January 21, 1983—final rule. Nor was there any discussion in the statements of

[1] See also 38 FR 31279 at 31280 (November 13, 1973) (middle column) noting that Paragraph VI(a)(1) of the final rule was changed to ''eliminate the requirement that safety-related structures, systems, and components also be designed to withstand the effects of vibratory motion of fifty percent of the Safe Shutdown Earthquake in combination with other appropriate loads well within elastic limits.'' (emphasis added).

considerations which would suggest that the Commission intended to narrow the scope of structures, systems and components that would be considered ''safety-related.'' Indeed, language in Revision 1 to Regulatory Guide (RG) 1.89, ''Environmental Qualification of Certain Electrical Equipment Important to Safety for Nuclear Power Plants'' (June 1984) strongly suggests that the use of the conjunctive word, ''and'' was an error and was not intended to change the fundamental scope of safety-related structures, systems and components. Appendix A to RG 1.89, ''Typical Safety-Related Electrical Equipment or System,'' purports to list systems and equipment that are ''safety-related.'' However, none of the equipment and systems actually listed as being ''safety-related'' would meet the definition of safety-related structures, systems and components if the conjunctive ''and'' were interpreted to require all three criteria in the ''safety-related'' definition to be satisfied. Moreover, a footnote to Appendix A of RG 1.89 states:

> Paragraph 50.49(b)(1) identifies safety-related electrical equipment as a subset of electrical equipment important to safety and defines it as the equipment that is relied upon to remain functional during and following design basis events to ensure (1) the integrity of the reactor coolant pressure boundary, (2) the capability to shut down the reactor and maintain it in a safe condition, or (3) the capability to prevent or mitigate the consequences of accidents which could result in potential offsite exposures comparable to the 10 CFR Part 100 guidelines. (emphasis added)

That the RG uses the disjunctive ''or'' when describing the underlying regulatory requirement of 10 CFR 50.49 is a strong indication that the NRC did not intend to change the scope of structures, systems, and components deemed to be ''safety-related,'' and that the use of the conjunctive word, ''and,'' was a grammatical error.

The conjunctive word, ''and,'' was subsequently used in the Maintenance Rule, 10 CFR 50.65, to describe the structures, systems, and components subject to the rule, as well as in the definition of ''safety-related structures, systems, and components'' contained in 10 CFR 50.2, which was added by a 1996 rulemaking amending Parts 50 and 100. Because the statements of considerations for the proposed and final rules did not contain any discussion of the ''safety-related'' definition, the Commission concludes that the subsequent rules simply repeated the definition used in 10 CFR 50.49 without intending any change in the scope of safety-related structures, systems, and components. *See* 53 FR 47822 (November 28, 1988—proposed Maintenance Rule); 56 FR 31324 (July 10, 1991—final Maintenance Rule); 57 FR 47802 (October 20, 1992—first proposed rule amending parts 50 and 100); 59 FR 52255 (October 17, 1994—second proposed rule amending parts 50 and 100); and 61 FR 65171 (December 11, 1996—final rule amending parts 50 and 100).

The final rule amending 10 CFR Parts 50 and 100, which *inter alia* added the definition of ''safety-related structures, systems, and components to 10 CFR 50.2, also added the word, ''postulated,'' to the term, ''design basis events,'' so that the term reads, ''design basis (postulated) events.'' Nothing in the statements of consideration for the first or second proposed rules, or the final rule, explains the addition of the word, ''postulated,'' in the Section 50.2 definition of ''safety-related structures, systems, and components while leaving it out of the definitions of ''safety-related structures, systems, and components'' in 10 CFR 50.65 and 10 CFR Part 100, Appendix A, and ''safety-related electrical equipment'' in 10 CFR 50.49. Therefore, the Commission also concludes that the addition of the word, ''postulated'' was an error and should be removed to conform the definition of ''safety-related structures, systems, and components'' to the long-standing wording of that term.

For these reasons, the Commission has determined that the amendments to 10 CFR 50.2, 50.49, and 50.65 are of a corrective nature, and do not involve any change in existing policy or otherwise constitute a new policy with respect to the scope of structures, systems, and components considered to be ''safety-related.'' Furthermore, since these amendments clarify the original intent of the Commission, they can be considered to be an interpretation of existing regulations. Accordingly, the Commission finds that public notice and opportunity for comment are unnecessary pursuant to 10 U.S.C. 553(b)(3)(A) and (B), and the Commission is publishing this rule in final form without first seeking public comments on the amendment in a proposed rule. However, if the NRC receives significant adverse comment by [30 days after publication], the NRC will publish a notice in the **Federal Register** that withdraws this action, and will address the comments received in response to this direct final rule as comments on a proposed rule (identical to this direct final rule) that is being concurrently published in the proposed rules section of this **Federal Register**. Any significant adverse comments will be deemed to be comments on the proposed rule and will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action.

Criminal Penalties

For purposes of Section 223 of the Atomic Energy Act of 1954, as amended (AEA), the Commission is issuing the direct final rule under one or more of sections 161b, 161i, or 161o of the AEA. Willful violations of the direct final rule are subject to criminal enforcement.

Electronic Access

Comments may be submitted electronically, in either ASCII text or Word Perfect format (version 5.1), by calling the NRC Electronic Bulletin Board on FedWorld or connecting to the NRC interactive rulemaking web site, ''Rulemaking Forum.'' The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet. Background documents on the rulemaking are also available for downloading and viewing on the bulletin board.

If using a personal computer and modem, the NRC subsystem on FedWorld can be accessed directly by dialing the toll-free number: 1–800–303–9672. Communications software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100 terminal emulation, the NRC rulemaking subsystems can then be accessed by selecting the ''Rules Menu'' option from the ''NRC Main Menu.'' For further information about options available for NRC at FedWorld, consult the ''Help/Information Center'' from the ''NRC Main Menu.'' Users will find the ''FedWorld Online User's Guides'' particularly helpful. Many NRC subsystems and databases also have a ''Help/Information Center'' option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct-dial phone number for the main FedWorld BBS: 703–321–3339; Telnet via Internet: fedworld.gov (192.239.93.3); File Transfer Protocol (FTP) via Internet:ftp:fedworld.gov (192.239.92.205); and World Wide Web using: http://www.fedworld.gov (this is the Uniform Resource Locator (URL)).

If using a method other than the toll-free number to contact FedWorld, access the NRC subsystem from the main FedWorld menu by selecting ''F—Regulatory, Government Administration and State Systems,'' then selecting ''A—Regulatory Information Mall.'' At that point, a menu will be displayed that has

an option ''A—U.S. Nuclear Regulatory Commission'' that will take you to the NRC Online Main Menu. You can also go directly to the NRC Online area by typing ''/go nrc'' at a FedWorld command line. If you access NRC from FedWorld's Main Menu, then you may return to FedWorld by selecting the ''Return to FedWorld'' option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, then you will have full access to all NRC systems, but you will not have access to the main FedWorld system.

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the Rules menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FedWorld using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is included. There is a 15-minute time limit for FTP access.

Although FedWorld can be accessed through the World Wide Web, like FTP that mode only provides access for downloading files and does not display the NRC Rules menu.

You may also access the NRC's interactive rulemaking web site through the NRC home page (http://www.nrc.gov). This site provides the same access as the FedWorld bulletin board, including the facility to upload comments as files (any format), if your web browser supports that function.

For more information on NRC bulletin boards, call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Telephone: 301–415–5780; e-mail: AXD3@nrc.gov. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–6215; e-mail CAG@nrc.gov.

Environmental Impact: Categorical Exclusion

The Commission has determined that this direct final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2), since this direct final rule makes amendments to the regulations which are corrective and nonpolicy in nature. Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This direct final rule does not contain a new or significantly amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0011.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Regulatory Analysis

The Commission has not prepared a regulatory analysis for this action because this direct final rule does not present new or revised positions, impose a new requirement, or recommend new action.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact on small entities. This rule affects only the operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the small business size standards adopted by the NRC (10 CFR 2.810). Since these companies are dominant in their service areas, this rule does not fall within the purview of the Act.

Backfit Analysis

The direct final rule does not impose any change on licensees with respect to the term, ''safety-related structures, systems and components.'' Rather, it provides a definition of ''safety-related structures, systems and components'' throughout 10 CFR Part 50 that is identical to the definition contained in 10 CFR Part 100, Appendix A, the NRC's first regulation defining ''safety-related structures, systems and components,'' which provides that ''safety-related'' structures, systems and components are those that possess any one of the three numbered attributes listed in the definition. This definition is consistent with both the NRC's and nuclear power plant licensees' longstanding understanding that the term, ''safety-related structures, systems and components'' includes those structures, systems and components that possess any one of the three listed attributes. Therefore, the NRC has determined that the Backfit Rule, 10 CFR 50.109, does not apply to this direct final rule because it does not impose any backfits as defined in 10 CFR 50.109(a)(1), and a backfit analysis has not been prepared for this direct final rule.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a ''major rule'' and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955 as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, and 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80—50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C 2237).

2. In § 50.2, the definition of *safety-related structures, systems and components* is revised to read as follows:

§ 50.2 Definitions.

* * * * *

Safety-related structures, systems and components means those structures, systems and components that are relied upon to remain functional during and following design basis events to assure:

(1) The integrity of the reactor coolant pressure boundary

(2) The capability to shut down the reactor and maintain it in a safe shutdown condition; or

(3) The capability to prevent or mitigate the consequences of accidents which could result in potential offsite exposures comparable to the applicable guideline exposures set forth in § 50.34(a)(1) or § 100.11 of this chapter, as applicable.

* * * * *

3. In § 50.49, paragraph (b)(1)(i)(B) is revised to read as follows:

§ 50.49 Environmental qualification of electric equipment important to safety for nuclear power plants.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(B) The capability to shut down the reactor and maintain it in a safe shutdown condition; or

* * * * *

4. In § 50.65, paragraph (b)(1) is revised to read as follows:

§ 50.65 Requirements for monitoring the effectiveness of maintenance at nuclear power plants.

* * * * *

(b) * * *

(1) Safety-related structures, systems and components that are relied upon to remain functional during and following design basis events to ensure the integrity of the reactor coolant pressure boundary, the capability to shut down the reactor and maintain it in a safe shutdown condition, or the capability to prevent or mitigate the consequences of accidents that could result in potential offsite exposure comparable to the guidelines in § 50.34(a)(1) or § 100.11 of this chapter, as applicable.

* * * * *

Dated at Rockville, MD, this 5th day of August, 1997.

For the Nuclear Regulatory Commission.

L. Joseph Callan,

Executive Director for Operations.

[FR Doc. 97–23611 Filed 9–5–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AF75

Definition of Safety-Related Structures, Systems, and Components; Technical Amendment

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to correct an error in the language of several sections in the regulations governing nuclear power plant licensing that define the term, ''safety-related structures, systems, and components.'' These definitions are inconsistent with the definition in regulations applicable to the siting of nuclear power plants and the Commission's longstanding practice and interpretation of that term.

DATES: Comments on the proposed rule must be received on or before October 8, 1997.

ADDRESSES: Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff. Hand deliver comments to 11555 Rockville Pike, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

For information on submitting comments electronically, see the discussion under Electronic Access in the Supplementary Information Section.

Copies of any comments received may be examined at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Geary S. Mizuno, Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1639; e-mail GSM@nrc.gov, or Clark Prichard, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6203; e-mail CWP@nrc.gov.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule published in the Rules and Regulations Section of this **Federal Register**.

Procedural Background

Because the NRC considers these amendments to be of a corrective nature, do not involve any change in existing policy or otherwise constitute a new policy, clarify the original intent of the Commission and therefore can be considered to be interpretive, the proposed rule is being published concurrently as a direct final rule. The direct final rule will become effective on November 7, 1997. However, if the NRC receives significant adverse comments on the direct final rule by October 8, 1997, the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to the proposed revisions in a subsequent final rule. The NRC will not initiate a second comment period on this action in the event the direct final rule is withdrawn.

Electronic Access

Comments may be submitted electronically, in either ASCII text or Word Perfect format (version 5.1), by calling the NRC Electronic Bulletin Board on FedWorld or connecting to the NRC interactive rulemaking web site, ''Rulemaking Forum.'' The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet. Background documents on the rulemaking are also available for downloading and viewing on the bulletin board.

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For more information on NRC bulletin boards, call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Telephone: 301–415–5780; e-mail: AXD3@nrc.gov. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–6215; e-mail CAG@nrc.gov.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC

proposes to adopt the following amendments to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955 as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, and 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 50.2, the definition of *safety-related structures, systems, and components* is revised to read as follows:

§ 50.2 Definitions.

* * * * *

Safety-related structures, systems, and components means those structures, systems, and components that are relied upon to remain functional during and following design basis events to assure:

(1) The integrity of the reactor coolant pressure boundary;

(2) The capability to shut down the reactor and maintain it in a safe shutdown condition; or

(3) The capability to prevent or mitigate the consequences of accidents which could result in potential offsite exposures comparable to the applicable guideline exposures set forth in § 50.34(a)(1) or § 100.11 of this chapter, as applicable.

* * * * *

3. In § 50.49, paragraph (b)(1)(i)(B) is revised to read as follows:

§ 50.49 Environmental qualification of electric equipment important to safety for nuclear power plants.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(B) The capability to shut down the reactor and maintain it in a safe shutdown condition; or

* * * * *

4. In § 50.65, paragraph (b)(1) is revised to read as follows:

§ 50.65 Requirements for monitoring the effectiveness of maintenance at nuclear power plants.

* * * * *

(b) * * *

(1) Safety-related structures, systems, and components that are relied upon to remain functional during and following design basis events to ensure the integrity of the reactor coolant pressure boundary, the capability to shut down the reactor and maintain it in a safe shutdown condition, or the capability to prevent or mitigate the consequences of accidents that could result in potential offsite exposure comparable to the guidelines in § 50.34(a)(1) or § 100.11 of this chapter, as applicable.

* * * * *

Dated at Rockville, MD, this 5th day of August 1997.

For the Nuclear Regulatory Commission.

L. Joseph Callan,

Executive Director for Operations.

[FR Doc. 97–23598 Filed 9–5–97; 8:45 am]

BILLING CODE 7590–01–P

federal register

Monday
September 8, 1997

Part V

Department of Health and Human Services

Centers for Disease Control and Prevention

Draft Guideline for Infection Control in Health Care Personnel, 1997; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Draft Guideline for Infection Control in Health Care Personnel, 1997

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

ACTION: Notice.

SUMMARY: This notice is a request for review of and comment on the Draft Guideline for Infection Control in Health Care Personnel, 1997. The guideline consists of two parts: Part 1. ''Infection Control Issues for Health Care Personnel, an Overview'' and Part 2. ''Recommendations for Prevention of Infections in Health Care Personnel'', and was prepared by the Hospital Infection Control Practices Advisory Committee (HICPAC), the National Center for Infectious Diseases (NCID), the National Immunizations Program, and the National Institute of Occupational Safety and Health (NIOSH), CDC.

DATES: Written comments on the draft document must be received on or before October 17, 1997.

ADDRESSES: Comments on this document should be submitted in writing to the CDC, Attention: PHG Information Center, Mailstop E–68, 1600 Clifton Road, N.E., Atlanta, Georgia 30333. To order copies of the **Federal Register** containing the document, contact the U.S. Government Printing Office, Order and Information Desk, Washington, DC 20402–9329, telephone (202) 512–1800. In addition, the **Federal Register** containing this draft document may be viewed and photocopied at most libraries designated as U.S. Government Depository Libraries and at many other public and academic libraries that receive the **Federal Register** throughout the country. Addresses and telephone numbers of the U.S. Government Depository Libraries are available by fax by calling U.S. Fax Watch at (202) 512–1716 and selecting option 5 from the main menu. The **Federal Register** is also available online on the Superintendent of Documents home page at: http://www.access.gpo.gov/su__docs.

FOR FURTHER INFORMATION CONTACT: The CDC Fax Information Center, telephone (888) 232–3299 and order document number 370160 or, for voice information, call the PH Guideline Information Center, telephone (888) 232–3228, then press 2, 2, 3, 2, 2, 1, 5 to go directly to the guideline information.

SUPPLEMENTARY INFORMATION: This 2-part document updates and replaces the previously published CDC Guideline for Infection Control in Hospital Personnel (Infect Control 1983 [Special Supplement]; 4 [Suppl]: 326–349). Part 1, ''Infection Control Issues for Health Care Personnel, an Overview'' serves as the background for the consensus recommendations of the Hospital Infection Control Practices Advisory Committee (HICPAC) that are contained in Part 2, ''Recommendations for Prevention of Infections in Health Care Personnel''.

HICPAC was established in 1991 to provide advice and guidance to the Secretary and the Assistant Secretary for Health, DHHS; the Director, CDC, and the Director, NCID regarding the practice of hospital infection control and strategies for surveillance, prevention, and control of nosocomial infections in U.S. hospitals. The committee also advises CDC on periodic updating of guidelines and other policy statements regarding prevention of nosocomial infections.

The Guideline for Infection Control in Hospital Personnel, 1997 is the fourth in a series of CDC guidelines being revised by HICPAC and NCID, CDC.

Dated: September 2, 1997.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

Draft Guideline for Infection Control in Health Care Personnel, 1997

Executive Summary

This guideline updates and replaces the previous edition of the CDC Guideline for Infection Control in Hospital Personnel published in 1983. The revised guideline, designed to provide methods for reducing the transmission of infections from patients to health care personnel and from personnel to patients, also provides an overview of the evidence for recommendations considered prudent by consensus of the Hospital Infection Control Practices Advisory Committee members. A working draft of this guideline was also reviewed by experts in infection control, occupational health, and infectious diseases; however, all recommendations contained in the guideline may not reflect the opinion of all reviewers.

This document focuses on the epidemiology of and preventive strategies for infections known to be transmitted in health care settings and those for which there are adequate scientific data on which to base recommendations for prevention. The prevention strategies addressed in this document include immunizations for vaccine preventable diseases; isolation precautions to prevent exposures to infectious agents; management of health care personnel exposures to infected persons, including postexposure prophylaxis; and work restrictions for exposed or infected health care personnel. In addition, because latex barriers are frequently used to protect personnel against transmission of infectious agents, this guideline also addresses issues related to latex hypersensitivity and provides recommendations to prevent sensitization and reactions among health care personnel.

Part I. Infection Control Issues for Health Care Personnel, an Overview

A. Introduction

In the United States, there are an estimated 8.8 million persons who work in health care professions and about 6 million persons work in more than 6,000 hospitals. However, health care is increasingly being provided outside of hospitals in facilities such as nursing homes, freestanding surgical and outpatient centers, emergency care clinics, and in patients, homes or during pre-hospital emergency care. Hospital-based personnel and personnel who provide health care outside of hospitals may acquire infections from or transmit infections to patients or other personnel, household members, or other community contacts.

In this document, the term health care personnel refers to all paid and unpaid persons working in health care settings who have the potential for exposure to infectious materials, including body substances, contaminated medical supplies and equipment, contaminated environmental surfaces, or contaminated air. These personnel may include, but are not limited to, emergency medical service personnel, dental personnel, laboratory personnel, mortuary personnel, nurses, nursing assistants, physicians, technicians, students and trainees, contractual staff not employed by the health care facility, and persons not directly involved in patient care (e.g., clerical, dietary, housekeeping, maintenance, and volunteer personnel) but potentially exposed to infectious agents. In general, health care personnel, in or outside of hospitals, who have contact with patients, body fluids, or specimens have a higher risk of acquiring or transmitting infections than do other health care personnel who have only brief casual contact with patients and their environment.

Throughout this document terms are used to describe routes of transmission of infections. These terms have been fully described in the Guideline for Isolation Precautions in Hospitals (1). They are summarized as follows: direct contact refers to body surface-to-body surface contact and physical transfer of microorganisms between a susceptible host and an infected or colonized person (e.g., while bathing, performing procedures); indirect contact refers to contact of a susceptible host with a contaminated object (e.g., instruments, hands); droplet contact refers to conjunctival, nasal, or oral mucosa contact with droplets containing microorganisms generated from an infected person (by coughing, sneezing, and talking or during certain procedures such as suctioning and bronchoscopy) that are propelled a short distance; airborne transmission refers to contact with droplet nuclei containing microorganisms that can remain suspended in the air for long periods of time or dust particles containing an infectious agent that can be widely disseminated by air currents; and finally, common vehicle transmission refers to contact with contaminated items such as food, water, medications, devices, and equipment.

In 1983, the Centers for Disease Control and Prevention (CDC) published the Guideline for Infection Control in Hospital Personnel (2). The document focused on the prevention of infections known to be transmitted to and from health care personnel. This revision of the Guideline has been expanded to include (a) recommendations for non-patient care personnel, both in and outside of hospitals; (b) management of exposures; (c) prevention of transmission of infections in microbiologic and biomedical laboratories; and, (d) because of the common use of latex barriers to prevent infections, prevention of latex hypersensitivity reactions. As in the 1982 Guideline, readers are frequently referred to the Guideline for Isolation Precautions in Hospitals (1) and other published guidelines and recommendations for precautions that health care personnel may use when caring for patients, or handling patient equipment or specimens (3, 4).

B. Infection Control Objectives for a Personnel Health Service

The infection control objectives of the personnel health service should be an integral part of a health care organization's general program for infection control. The objectives usually include the following: (a) Educating personnel about the principles of infection control and stressing individual responsibility for infection control; (b) collaborating with the infection control department in monitoring and investigating potentially harmful infectious exposures and outbreaks among personnel; (c) providing care to personnel for work-related illnesses or exposures; (d) identifying work-related infection risks and instituting appropriate preventive measures; and (e) containing costs by preventing infectious diseases that result in absenteeism and disability. These objectives cannot be met without the support of the health care organization's administration, medical staff, and other health care personnel.

C. Elements of a Personnel Health Service for Infection Control

Certain elements are necessary to attain the infection control goals of a personnel health service: (a) Coordination with other departments; (b) medical evaluations; (c) health and safety education; (d) immunization programs; (e) management of job-related illnesses and exposures to infectious diseases, including policies for work restrictions for infected or exposed personnel; (f) counseling services for personnel on infection risks related to employment or special conditions; and (g) maintenance and confidentiality of personnel health records.

The organization of a personnel health service may be influenced by the size of the institution, the number of personnel, and the services offered. Personnel with specialized training and qualifications in occupational health can facilitate the provision of effective services.

1. Coordination With Other Departments

For infection control objectives to be achieved, the activities of the personnel health service must be coordinated with infection control and other departmental personnel. This coordination will help ensure adequate surveillance of infections in personnel and provision of preventive services. Coordinating activities will also help to ensure that investigations of exposures and outbreaks are conducted efficiently and preventive measures implemented promptly.

2. Medical Evaluations

Medical evaluations before placement can ensure that personnel are not placed in jobs that would pose undue risk of infection to them, other personnel, patients, or visitors. An important component of the placement evaluation is a health inventory. This usually includes determining immunization status and obtaining histories of any conditions that might predispose personnel to acquiring or transmitting communicable diseases, e.g., history of chickenpox, rubella, measles, mumps, hepatitis, immunodeficiency, dermatologic conditions (including chronic draining or open wounds), and risk factors or treatment for tuberculosis. This information will assist in decisions about immunizations or postexposure management.

A physical examination, another component of the medical evaluation, can be used to screen personnel for conditions that might increase the risk of transmitting or acquiring work related diseases and can serve as a baseline for determining whether future diseases are work related. However, the cost-effectiveness of routine physical examinations, including laboratory testing (such as complete blood counts, serologic tests for syphilis, urinalysis, chest x-rays) or screening for enteric or other pathogens for infection control purposes, has not been demonstrated. Conversely, screening for some vaccine-preventable diseases, such as hepatitis B, measles, mumps, rubella, or varicella, may be cost-effective. In general, the health inventory can be used to guide decisions regarding physical examinations or laboratory tests. However, some local public health ordinances may mandate that certain screening procedures be used.

Periodic evaluations may be done as indicated for job reassignment, ongoing programs (e.g., tuberculosis screening), or for evaluation of work-related problems.

3. Personnel Health and Safety Education

Personnel are more likely to comply with an infection control program if they understand its rationale. Thus, personnel education is a cardinal element of an effective infection control program. Clearly written policies, guidelines, and procedures ensure uniformity, efficiency, and effective coordination of activities. However, since the risk of infection varies by job category, infection control education should be modified accordingly. In addition, some personnel may need specialized education on infection risks related to their employment, and of preventive measures that will reduce those risks. Furthermore, educational materials need to be appropriate in content and vocabulary to the educational level, literacy, and language of the employee. All health care personnel need to be educated about the

organization's infection control policies and procedures.

4. Immunization Programs

Ensuring that personnel are immune to vaccine-preventable diseases is an essential part of successful personnel health programs. Optimal use of vaccines can prevent transmission of vaccine-preventable diseases and eliminate unnecessary work restriction. Preventing illness through comprehensive personnel immunization programs is far more cost-effective than case management and outbreak control. Mandatory immunization programs, which include both newly hired and currently employed persons, are more effective than voluntary programs in ensuring that susceptible persons are vaccinated (5). Also, programs in which the employer bears the cost of vaccination have had higher personnel vaccination rates than have programs without such support.

National guidelines for immunization of and postexposure prophylaxis for health care personnel are provided by the U.S. Public Health Service's Advisory Committee on Immunization Practices (ACIP) (Table 1) (6, 7). ACIP guidelines also contain (a) detailed information on the epidemiology of vaccine-preventable diseases; (b) data on the safety and efficacy of vaccines and immune globulin preparations (6–20); and (c) recommendations for immunization of immunocompromised persons (Table 2) (14, 21). The recommendations in this guideline have been adapted from the ACIP recommendations (7). In addition, individual states and professional organizations have regulations or recommendations on the vaccination of health care personnel (22).

Decisions about which vaccines to include in immunization programs have been made by considering (a) the likelihood of personnel exposure to vaccine-preventable diseases and the potential consequences of not vaccinating personnel; (b) the nature of employment (i.e., type of contact with patients and their environment); and (c) the characteristics of the patient population within the health care organization. Immunization of personnel before they enter high-risk situations is the most efficient and effective use of vaccines in health care settings.

Screening tests are available to determine susceptibility to certain vaccine-preventable diseases (e.g., hepatitis B, measles, mumps, rubella, and varicella). Such screening programs need to be combined with tracking systems to ensure accurate maintenance of personnel immunization records. Accurate immunization records ensure that susceptible personnel are promptly identified and appropriately vaccinated.

5. Management of Job-Related Illnesses and Exposures

Primary functions of the personnel health service are to arrange for prompt diagnosis and management of job-related illnesses and to provide appropriate postexposure prophylaxis following job-related exposures.

It is the responsibility of the health care organization to implement measures to prevent further transmission of infection, which sometimes warrants exclusion of personnel from work or patient contact. Decisions on work restrictions are based on the mode of transmission and the epidemiology of the disease (Table 3). Exclusion policies should include a statement of authority defining who may exclude personnel. The policies also need to be designed to encourage personnel to report their illnesses or exposures and not to penalize them with loss of wages, benefits, or job status. In addition, exclusion policies must be enforceable, and all personnel, especially department heads, supervisors, and nurse managers, should know which infections may warrant exclusion and where to report the illnesses 24 hours a day. Health care personnel who have contact with infectious patients outside of hospitals also need to be included in the postexposure program. Notification of emergency response personnel possibly exposed to selected infectious disease is mandatory (1990 Ryan White Act, Subtitle B, 42 U.S.C 300ff–80).

6. Health Counseling

Access to adequate health counseling for personnel is another crucial element of an effective personnel health service. Health counseling allows personnel to receive individualized information regarding (a) the risk and prevention of occupationally acquired infections; (b) the risk of illness or other adverse outcome following exposures; (c) management of exposures, including the risks and benefits of postexposure prophylaxis regimens; (d) the potential consequences of exposures or communicable diseases for family members, patients, or other personnel, both inside and outside the health care facility.

7. Maintenance of Records, Data Management, and Confidentiality

Maintenance of records on medical evaluations, immunizations, exposures, postexposure prophylaxis, and screening tests in a retrievable, preferably computerized, data base allows efficient monitoring of the health status of personnel. Such record keeping also helps to ensure that the organization will provide consistent and appropriate services to health care personnel.

Individual records for all personnel should be maintained in accordance with the Occupational Safety and Health Administration (OSHA) record-keeping requirements for occupational injuries and illnesses (23). In addition, the 1991 OSHA Occupational Exposure to Bloodborne Pathogens; Final Rule (24) requires employers, including health care facilities, to establish and maintain an accurate record for each employee with occupational exposure to bloodborne pathogens. The standard also requires that each employer ensure that the employee medical records are (a) kept confidential; (b) not disclosed or reported without the employee's express written consent to any person within or outside the workplace except as required by law; and (c) maintained by the employer for at least the duration of the worker's employment plus 30 years.

More recently, OSHA developed enforcement policies that require the recording and reporting of positive tuberculin skin test results (25). It would be beneficial to health care organizations and personnel if the principles of record keeping and confidentiality mandated by OSHA were expanded to other work-related exposures and incidents, immunizations, tuberculosis screening, and investigation and management of nosocomial outbreaks.

D. Epidemiology and Control of Selected Infections Transmitted Among Health Care Personnel and Patients

Almost any transmissible infection may occur in the community at large or within health care organizations and can affect both personnel and patients. However, only those infectious diseases that occur frequently in the health care setting or are most important to personnel are discussed below.

1. Bloodborne Pathogens

a. Overview. Assessment of the risk and prevention of transmission of bloodborne pathogens, such as hepatitis B virus (HBV), hepatitis C virus (HCV), and human immunodeficiency virus (HIV) in health care settings is based upon information from a variety of sources, including surveillance and investigation of suspected cases of transmission to health care personnel and patients, seroprevalence surveys of health care personnel and patients, and

studies of the risk of seroconversion after exposure to blood or other body fluids from infected persons. In this document, the emphasis of the discussion of bloodborne pathogens will be on patient-to-personnel transmission.

CDC has periodically issued and updated recommendations for prevention of transmission of bloodborne pathogens in health care settings that provide detailed information and guidance (26–36). Also, in 1991, OSHA published a bloodborne pathogen standard, based on the concept of Universal Precautions, to prevent occupational exposure to bloodborne pathogens (24). In essence, the use of Standard Precautions (which incorporates Universal Precautions), including appropriate handwashing and barrier precautions to prevent contact with blood and body fluids and using techniques and devices that reduce percutaneous injury, will reduce the risk of transmission of bloodborne pathogens (1, 27, 37–42).

The risk posed to patients from health care personnel infected with bloodborne pathogens such as HBV and HIV has been the subject of much concern and debate. There are no data to indicate that infected workers who do not perform invasive procedures pose a risk to patients. Consequently, work restrictions for these workers are not appropriate. However, the extent to which infected workers who perform certain types of invasive procedures pose a risk to patients and the restrictions that should be imposed on these workers have been much more controversial. In 1991, CDC recommendations on this issue were published (43). Subsequently, Congress mandated that each state implement the CDC guidelines or equivalent as a condition for continued federal public health funding to that state. While all states have complied with this mandate, there is a fair degree of state-to-state variation regarding specific provisions. Local or state public health officials should be contacted to determine the regulations or recommendations applicable in a given area. CDC is currently in the process of reviewing relevant data regarding health care personnel to patient transmission of bloodborne pathogens.

b. Hepatitis B. Nosocomial transmission of HBV is a serious risk for health care personnel (44–48). Approximately 1,000 health care personnel were estimated to have become infected with HBV in 1994. This is a 90% decline since 1985, attributable to the use of vaccine and adherence to other preventive measures (e.g., Standard Precautions) (49). During the past decade, an estimated 100 to 200 health care personnel have died annually from HBV infection (49). The risk of acquiring HBV infection from occupational exposure is dependent on the nature and frequency of exposure to blood or body fluids containing blood (44, 48). The risk of infection is at least 30% after a percutaneous exposure to blood from a hepatitis B e antigen-positive source (49).

HBV is transmitted by percutaneous or mucosal exposure to blood and serum-derived body fluids from persons who either are have acute or chronic HBV infection. The incubation period is 45 to 180 days. Any person with blood positive for hepatitis B surface antigen (HBsAg) is potentially infectious.

Hepatitis B vaccination of health care personnel who have contact with blood and body fluids can prevent transmission of HBV and is strongly recommended (7, 8, 36). The OSHA bloodborne pathogen standard mandates that hepatitis B vaccine be made available, at the employer's expense, to all health care personnel with occupational exposure to blood or other potentially infectious materials (24). Provision of vaccine during training for health care professions before such blood exposure occurs may increase the vaccination rates among personnel and prevent infection among trainees who are at increased risk of unintentional injuries while learning techniques.

Prevaccination serologic screening for susceptibility to HBV infection is not indicated for persons being vaccinated, unless the health care organization considers screening to be cost-effective. Postvaccination screening for antibody to HBsAg (anti-HBs) is advised for personnel at ongoing risk of blood exposure, to determine if response to vaccinations has occurred and to aid in determining the appropriate postexposure prophylaxis or the need for revaccination. Personnel who do not respond to or do not complete the primary vaccination series should be revaccinated with a second three-dose vaccine series or be evaluated to determine if they are HBsAg positive. Revaccinated persons should be tested for anti-HBs at the completion of the second vaccine series (7). If they do not respond, no further vaccination series should be given and they should be evaluated for the presence of HBsAg (e.g., possible chronic HBV infection).

Vaccine-induced antibodies decline gradually over time, and up to 60% of those who initially respond to vaccination will lose detectable anti-HBs over 12 years (50). Booster doses of vaccine are not recommended because persons who respond to the initial vaccine series remain protected against clinical hepatitis and chronic infection even when their anti-HBs levels become low or undetectable (51).

The need for postexposure prophylaxis and/or vaccination depends on the HBsAg status of the source of the exposure as well as the immunization status of the person exposed (Table 4) (36). Vaccine should be offered following any exposure in an unvaccinated person, and, if the source is known to be HBsAg positive, hepatitis B immune globulin (HBIG) should be given, preferably within 24 hours. The effectiveness of HBIG given >7 days after HBV exposure is unknown (6, 8, 36). If the exposed person is known not to have responded to a 3 dose vaccine series, a single dose of HBIG and a dose of hepatitis B vaccine needs to be given as soon as possible after the exposure. If the exposed person is known not to have responded to a 3 dose vaccine series or to revaccination, two doses of HBIG need to be given, one doses as soon as possible after exposure and the second dose 1 month later.

c. Hepatitis C. HCV is the etiologic agent in most cases of parenterally transmitted non-A, non-B hepatitis in the United States (52,53). During the past decade, the annual number of newly acquired HCV infections has ranged from an estimated 180,000 in 1984 to an estimated 28,000 in 1995. Of these, an estimated 2%–4% occurred among health care personnel who were occupationally exposed to blood (53).

A case-control study of patients with acute non-A, non-B hepatitis, conducted before the identification of HCV, showed a significant association between acquiring disease and health care employment, specifically, patient care or laboratory work (54). Seroprevalence studies among hospital-based health care personnel have shown anti-HCV seroprevalence rates of 1% to 2% (55–58). In a study that assessed risk factors for infection in health care personnel, a history of accidental needlesticks was independently associated with anti-HCV positivity (55).

Several case reports have documented transmission of HCV infection from anti-HCV-positive patients to health care personnel as a result of accidental needlesticks or cuts with sharp instruments (59, 60). In follow-up studies of health care personnel who sustained percutaneous exposures to blood from anti-HCV positive patients, the incidence of anti-HCV seroconversion averaged 1.8% (range, 0%–7%) (61–64). In a study in which HCV RNA polymerase chain reaction methods were used to measure HCV

infection, the incidence of HCV infection was 10% (64).

The incubation period for hepatitis C is 6–7 weeks, and nearly all persons with acute infection develop chronic HCV infection with persistent viremia and have the potential for transmission of HCV to others.

Serologic assays to detect antibody to HCV (anti-HCV) are commercially available. The interpretation of anti-HCV test results is limited by several factors: (a) These assays will not detect anti-HCV in approximately 5% of persons infected with HCV; (b) these assays do not distinguish between acute, chronic, or past infection; (c) there may be a prolonged interval between the onset of acute illness with HCV and seroconversion; and (d) when the assays are used in populations with a low prevalence of HCV infection, commercial screening assays for anti-HCV yield a high proportion (up to 50%) of false-positive results (30, 53). Although no true confirmatory test has been developed, supplemental tests for specificity are available and should be used to judge the validity of repeatedly reactive results by screening assays.

Although the value of immune globulin (IG) for postexposure prophylaxis after occupational exposure to hepatitis C virus has been difficult to assess (65–67), postexposure prophylaxis with IG does not appear to be effective in preventing HCV infection. Current IG preparations are manufactured from plasma that has been screened for HCV antibody; positive lots are excluded from use. An experimental study in chimpanzees found that IG manufactured from anti-HCV-screened plasma and administered one hour after exposure to HCV did not prevent infection or disease (68). Thus, available data do not support the use of IG for postexposure prophylaxis of hepatitis C and its use is not recommended. There is no information regarding the use of antiviral agents, such as alpha interferon, in the postexposure setting, and such prophylaxis is not recommended (33, 69).

Health care institutions should consider implementing recommended policies and procedures for follow-up for HCV infection after percutaneous or mucosal exposures to blood (69).

d. Human Immunodeficiency Virus. Nosocomial transmission of HIV infection from patients to health care personnel may occur following percutaneous or, infrequently, mucocutaneous, exposure to blood or body fluids containing blood. Based on prospective studies of health care personnel percutaneously exposed to HIV-infected blood, the average risk for HIV infection has been estimated to be 0.3% (70–74). A retrospective case-control study to identify risk factors for HIV seroconversion among health care personnel after a percutaneous exposure to HIV-infected blood found that they were more likely to become infected if they were exposed to a larger quantity of blood, represented in the study as presence of visible blood on the device prior to injury; a procedure that involved a needle placed directly in the patient's vein or artery; or deep injury. Transmission of HIV infection also was associated with injuries in which the source patient was terminally ill with acquired immunodeficiency syndrome (AIDS); this may be attributable to the increased titer of HIV in blood that is known to accompany late stages of illness, or possibly other factors, such as the presence of syncytia-inducing strains of HIV in these patients. In addition, the findings of this study suggested that the use of zidovudine postexposure may be protective for health care personnel (71).

Factors that determine health care personnel's risk of infection with HIV include the prevalence of infection among patients, the risk of infection transmission after an exposure, and the frequency and nature of exposures (75). Most personnel who acquire infection following percutaneous exposure develop HIV antibody within 6 months of exposure. HIV-infected persons are likely to transmit virus from the time of early infection throughout life.

In 1990, CDC published guidelines for postexposure management of occupational exposure to HIV (29). In 1996, provisional recommendations for postexposure chemoprophylaxis were published, reflecting current scientific knowledge on the efficacy of postexposure prophylaxis and the use of antiretroviral therapies (76). The U.S. Public Health Service will periodically review scientific information on antiretroviral therapies and will publish updated recommendations for their use as postexposure prophylaxis as necessary.

2. Conjunctivitis

Conjunctivitis can be caused by a variety of bacteria and viruses. However, adenovirus has been the primary cause of nosocomial outbreaks of conjunctivitis. Nosocomial outbreaks of conjunctivitis caused by other pathogens are rare.

Adenoviruses, which can cause respiratory, ocular, genitourinary, and gastrointestinal infections, are a major cause of epidemic keratoconjunctivitis (EKC) in the community and health care settings. Nosocomial outbreaks have primarily occurred in eye clinics or offices, but have also been reported in newborn intensive care units and long term care facilities (77–81). Patients and health care personnel have acquired and transmitted EKC during these outbreaks. The incubation period ranges from 5 to 12 days and shedding of virus occurs from late in the incubation period up to 14 days after onset of disease (78). Adenovirus survives for long periods on environmental surfaces; ophthalmologic instruments and equipment can become contaminated and transmit infection. Contaminated hands are also a major source of person-to-person transmission of adenovirus, both from patients to health care personnel and from health care personnel to patients. Handwashing, glove use, and disinfection of instruments can prevent the transmission of adenovirus (77, 78).

Infected personnel should not provide patient care for the duration of symptoms following onset of EKC (77, 78) or purulent conjunctivitis caused by other pathogens.

3. Cytomegalovirus

There are two principal reservoirs of cytomegalovirus (CMV) in health care institutions: (a) Infants and young children infected with CMV, and (b) immunocompromised patients, such as those undergoing solid-organ or bone-marrow transplantation or persons with AIDS (82–88). However, personnel who provide care to such high-risk patients have a rate of primary CMV infection that is no higher than that among personnel without such patient contact (3% versus 2%) (89–95). In areas where there are patient populations with high prevalence of CMV, seroprevalence studies and epidemiologic investigations have also demonstrated that personnel who care for patients have no greater risk of acquiring CMV than do personnel who have no patient contact (87, 89–92, 94, 96–99). In addition, epidemiologic studies that included DNA testing of viral strains have demonstrated that personnel who acquired CMV infection while providing care to CMV-infected infants did not acquire their infection from the CMV-infected patients (83, 87, 90, 100–102).

CMV transmission appears to occur directly either through close, intimate contact with an excreter of CMV or through contact with contaminated secretions or excretions, especially saliva or urine (95, 103–106). Transmission via the hands of personnel or infected person(s) also has been suggested (87, 107). The incubation period for person-to-person transmission is not known. Although

CMV can survive on environmental surfaces and other objects for short periods of time (108), there is no evidence that the environment plays a role in the transmission of infection (87).

Because infection with CMV during pregnancy may have adverse effects on the fetus, protecting women of childbearing age from persons who are excreting the virus is of primary concern. However, the risk of occupational transmission to female health care personnel is no greater than the risk among the general public (89, 96, 109). While a majority of fetal infections follow primary maternal infection, fetal infection may follow maternal reinfection or reactivation. Serologic or virologic screening programs to identify CMV-infected patients or seronegative female personnel of childbearing age are impractical and costly for the following reasons: (a) The virus can be intermittently shed (110); repeated screening tests may be needed to identify shedders; (b) seropositivity for CMV does not offer complete protection against maternal reinfection or reactivation and subsequent fetal infection (109, 111); (c) no currently available vaccines (112–115) or prophylactic therapy (116–120) can provide protection against primary infection; and (d) no studies clearly indicate that personnel may be protected by transfer to areas with less contact with patients likely to be reservoirs for CMV infection (83, 87, 89–91, 96, 99, 121). Counseling of female personnel of childbearing age on the risk of transmission of CMV in both nonoccupational and occupational environments may help allay their fears (122).

Work restrictions for personnel who contract CMV illnesses are not necessary; the risk of transmission of CMV can be reduced by careful adherence to handwashing and Standard Precautions. (1, 109, 123).

4. Diphtheria

Nosocomial transmission of diphtheria among patients and personnel has been reported (124–126). Diphtheria is currently a rare disease in the United States; during 1980–1994 only 41 diphtheria cases were reported (127), however, community outbreaks of diphtheria have occurred in the past (128), and clusters of infection may occur in communities where diphtheria was previously endemic (129). In addition diphtheria epidemics have been occurring since 1990 in the New Independent States of the former Soviet Union (130–132) and in Thailand (133). At least 20 imported cases of diphtheria have been reported in countries in Europe (132, 134) and two cases occurred in U.S. citizens visiting or working in the Russian Federation and Ukraine (135). Health care personnel are not at substantially higher risk than the general adult population for acquiring diphtheria; however, there is the potential for sporadic or imported cases to require medical care in the United States.

Diphtheria, caused by *Corynebacterium diphtheriae*, is transmitted by contact with respiratory droplets or contact with skin lesions of infected patients. The incubation period is usually 2–5 days. Patients with diphtheria are usually infectious for ≥2 weeks, but communicability can persist for several months (136). Droplet precautions are recommended for patients with pharyngeal symptoms, and contact precautions are recommended for patients with cutaneous lesions. Precautions need to be maintained until antibiotic therapy is completed and two cultures taken ≥24 hours apart are negative (1).

Limited serosurveys conducted since 1977 in the United States indicate that 22%–62% of adults 18–39 years of age may lack protective diphtheria antibody levels (137–141). Prevention of diphtheria is best accomplished by maintaining high levels of diphtheria immunity among children and adults (17, 130, 131). Immunization with tetanus and diphtheria toxoid (Td) is recommended every 10 years for all adults who have completed the primary immunization series (7, 17) (Table 1). Health care personnel need to consider obtaining Td immunization from their health care providers (7).

To determine if health care personnel directly exposed to oral secretions of patients infected with toxigenic strains of *C. diphtheriae* are carriers, cultures of the nasopharynx may be obtained. Exposed personnel need to be evaluated for evidence of disease daily for 1 week (142). Although the efficacy of antimicrobial prophylaxis in preventing secondary disease has not been proven, prophylaxis with either a single IM injection of benzathine penicillin (1.2 million units) or oral erythromycin (1 g/day) for 7 days has been recommended (17). Follow-up nasopharyngeal cultures for *C. diphtheriae* need to be obtained after antimicrobial therapy is completed. If the organism has not been eradicated, a 10-day course of erythromycin needs to be given (142). In addition, previously immunized, exposed personnel need to receive a dose of Td if they have not been vaccinated within the previous 5 years (17).

Exclusion from duty is indicated for personnel with *C. diphtheriae* infection or those identified as asymptomatic carriers until antimicrobial therapy is completed and nasopharyngeal cultures are negative.

5. Gastrointestinal Infections

Acute gastrointestinal infections may be caused by a variety of agents, including bacteria, viruses, and protozoa. However, only a few agents have been documented in nosocomial transmission (Table 5) (143–161). Nosocomial transmission of agents that cause gastrointestinal infections usually results from contact with infected individuals (143, 154, 156, 162); from consumption of contaminated food, water, or other beverages (143, 159, 162); or from exposure to contaminated objects or environmental surfaces (145, 146, 163). Airborne transmission of small round-structured viruses (Norwalk-like viruses) has been postulated but not proven (157, 158, 164–167). Inadequate handwashing by health care personnel (168) and inadequate sterilization or disinfection of patient-care equipment and environmental surfaces increase the likelihood of transmission of agents that cause gastrointestinal infections. Generally, adherence to good personal hygiene by personnel before and after all contacts with patients or food and to either Standard or Contact Precautions (1) will minimize the risk of transmitting enteric pathogens (160, 169).

Laboratory personnel who handle infectious materials may also be at risk for occupational acquisition of gastrointestinal infections, most commonly with *Salmonella typhi*. Although the incidence of laboratory-acquired *S. typhi* infection has decreased substantially since 1955, infections continue to occur among laboratory workers, particularly those performing proficiency exercises or research tests (144, 155). Several typhoid vaccines are available for use in laboratory workers who regularly work with cultures or clinical materials containing *S. typhi* (170). The oral live-attenuated Ty21a vaccine, the IM Vi capsular polysaccharide (ViCPS) vaccine, or the subcutaneous inactivated vaccine may be given (170) (Table 1). Booster doses of vaccine are required at 2- to 5-year intervals, depending on the preparation used. The live-attenuated Ty21a vaccine should not be used for immunocompromised persons, including those known to be infected with HIV(170).

Personnel who develop an acute gastrointestinal illness, defined as vomiting and/or diarrhea (i.e., ≥3 loose stools in a 24-hour period) with or without associated symptoms such as fever, nausea, and abdominal pain, are likely to have high concentrations of the infecting agent in their feces (bacteria, viruses, and parasites) or vomitus (viruses and parasites) (158, 171, 172). It is important to determine the etiology of gastrointestinal illness in health care personnel who care for patients at high risk for severe disease (e.g., newborns, the elderly, and immunocompromised patients). The initial evaluation of personnel with gastroenteritis needs to include a thorough history and determination of the need for specific laboratory tests such as stool or blood cultures, staining procedures, and serologic or antigen/antibody tests (155, 163, 173, 174).

After resolution of some acute bacterial gastrointestinal illnesses, some personnel may have persistent carriage of the infectious agent. However, once the person has clinically recovered and is having formed stools, the risk of transmission of enteric pathogens is minimal when there is adherence to Standard Precautions (1, 160). In addition, appropriate antimicrobial therapy may eradicate fecal carriage of *Shigella* (175) or *Campylobacter* (176). However, antimicrobial or antiparasitic therapy may not eliminate carriage of *Salmonella* (177) or *Cryptosporidium*. Moreover, antimicrobials may prolong excretion of *Salmonella* (178) and lead to emergence of resistant strains (179). However, transmission of *Salmonella* to patients from personnel who are asymptomatic carriers of *Salmonella* has not been well documented (160). In general, antimicrobial therapy is not recommended unless the person is at high risk for severe disease (180). When antibiotics are given, stool cultures should be obtained ≥48 hours after completion of antibiotic therapy.

Restriction from patient care or food-handling is indicated for personnel with diarrhea or acute gastrointestinal symptoms, regardless of the causative agent (1, 163). Some local and state agencies have regulations that require work exclusion for health care personnel and/or food handlers who have gastrointestinal infections caused by *Salmonella* or *Shigella*. These regulations may require that such personnel be restricted from duty until ≥2 consecutive stool cultures obtained ≥24 hours apart are negative.

6. Hepatitis A

Nosocomial hepatitis A occurs infrequently and transmission to personnel usually occurs when the source patient has unrecognized hepatitis and is fecally incontinent or has diarrhea (181–190). Other risk factors for hepatitis A virus (HAV) transmission to personnel include activities that increase the risk of fecal-oral contamination, such as (a) eating or drinking in patient-care areas (181, 183, 185, 191); (b) not washing hands after handling an infected infant (183, 191, 192) and (c) sharing food, beverages, or cigarettes with patients, their families, or other staff (181, 183);.

HAV is transmitted primarily by the fecal-oral route. It has not been reported to occur after inadvertent needlesticks or other contact with blood, but has rarely been reported to be transmitted by transfusion of blood products (185, 193, 194). The incubation period for HAV is 15–50 days. Fecal excretion of HAV is greatest during the incubation period of disease before the onset of jaundice (195). Once disease is clinically obvious, the risk of transmitting infection is decreased. However, some patients admitted to the hospital with HAV, particularly immunocompromised patients, may still be shedding virus because of prolonged or relapsing disease and they are potentially infective (182, 195). Fecal shedding of HAV, formerly believed to continue only for up to 2 weeks after onset of dark urine (195), has been shown to occur for up to 6 months after diagnosis of infection in premature infants (181). Anicteric infection is typical in young children and infants (196).

Personnel can protect themselves and others from infection with HAV by following Standard Precautions (1). Foodborne transmission of hepatitis A is not discussed in this guideline, but has occurred in health care settings (197, 198).

Two inactivated hepatitis A vaccines, HAVRIX® and VAQTA®, are now available and provide long-term preexposure protection against clinical infection with >94% efficacy (196). Serologic surveys among health care personnel have not shown an elevated prevalence of HAV infection compared with control populations (47, 184, 199, 200); therefore, routine administration of vaccine in health care personnel is not recommended. Vaccine may be useful for personnel working in areas where HAV is highly endemic and is indicated for personnel who handle HAV infected primates or are exposed to HAV in a research laboratory. The role of hepatitis A vaccine in controlling outbreaks has not been adequately investigated (7). Immune globulin (IG) given within 2 weeks following an HAV exposure is >85% effective in preventing hepatitis A virus infection (196) and may be advisable in some outbreak situations (7, 196).

Restriction from patient care or food-handling is indicated for personnel with HAV infection. They may return to regular duties 1 week following onset of illness (7).

7. Herpes Simplex

Nosocomial transmission of herpes simplex viruses (HSV) is rare. Nosocomial transmission has been reported in nurseries (201–203) and intensive care units (204, 205) where high-risk patients (e.g., neonates, patients with severe malnutrition, patients with severe burns or eczema, and immunocompromised patients) are located. Nosocomial transmission of HSV occurs primarily through contact with either primary or recurrent lesions or from virus-containing secretions, such as saliva, vaginal secretions, or amniotic fluid (202, 204, 206). Exposed areas of skin are the most likely sites of nosocomial infection, particularly when minor cuts, abrasions, or other skin lesions are present (205). The incubation period of HSV is 2–14 days (207). The duration of viral shedding has not been well defined (208).

Personnel may develop an herpetic infection of the fingers (herpetic whitlow or paronychia) from exposure to contaminated oral secretions (205, 206). Such exposures are a distinct hazard for nurses, anesthesiologists, dentists, respiratory care personnel, and other personnel who have direct (usually hand) contact with either oral lesions or respiratory secretions from patients (205). Less frequently, personnel may develop mucocutaneous infection on other body sites from contact with infectious body secretions (209).

Personnel with active infection of the hands (herpetic whitlow) can potentially transmit HSV infection to patients with whom they have contact (206). Transmission of HSV from personnel with orofacial HSV infection to patients has also been infrequently documented (201); however, the magnitude of the risk is unknown (203, 210). Although asymptomatic infected persons can shed the virus, they are less infectious than persons with active lesions (208, 211).

Personnel can protect themselves from acquiring HSV by adhering to Standard Precautions (1). The risk of transmission of HSV from personnel with orofacial infections to patients can be reduced by handwashing before all patient care and by the use of appropriate barriers, such as a mask or

gauze dressing, to prevent hand contact with the lesion.

Because personnel with orofacial lesions may touch their lesions and potentially transmit infections, excluding them from the care of patients at high risk for serious disease (e.g., neonates, patients with severe malnutrition, patients with severe burns or eczema, and immunocompromised patients) should be considered. Personnel with HSV infections of the fingers or hands can more easily transmit infection and, therefore, need to be excluded from patient care until their lesions have crusted. In addition, herpetic lesions may be secondarily infected by *Staphylococcus* and *Streptococcus* and personnel with such infections should be evaluated to determine if they need to be excluded from patient contact until the secondary infection has resolved. There have been no reports that personnel with genital HSV infections have transmitted HSV to patients; therefore, work restrictions for personnel with genital herpes are not indicated.

8. Measles

Nosocomial transmission of measles virus (sporadic and epidemic) has been well described (212–221). From 1985 through 1991, approximately 3,000 (4%) of all reported episodes of measles in the United States were probably acquired in a medical facility; of these, >700 (25%) occurred in health care personnel, many of whom were not vaccinated (7). Data have suggested that health care personnel have a 13-fold greater risk of measles compared with the general population (7). Of the 2,765 episodes of measles reported during 1992–95, 385 (13.9%) occurred in health care settings (213, 222).

Measles is transmitted both by large droplets during close contact between infected and susceptible persons and by the airborne route (221, 223). Measles is highly transmissible and frequently misdiagnosed during the prodromal stage. The incubation period for measles is 5–21 days. Immunocompetent persons with measles shed the virus from the nasopharynx, beginning with the prodrome until 3–4 days after rash onset; immunocompromised persons with measles may shed virus for extended periods of time (224).

Strategies to prevent nosocomial transmission of measles include (a) documentation of measles immunity in health care personnel; (b) prompt identification and isolation of persons with fever and rash; (c) adherence to airborne precautions for suspected and proven cases of measles (1); and (d) vaccination of patients in medical settings, especially emergency rooms.

It is essential that all personnel have documentation of measles immunity regardless of their length of employment or whether they are involved in patient care. Furthermore, some states have regulations requiring measles immunity for health care personnel. Although persons born before 1957 are generally considered to be immune to measles, serologic studies indicate that 5%-9% of health care personnel born before 1957 may not be immune (225, 226). Furthermore, during 1985–1989, 29% of all measles cases in U.S. health care personnel occurred in those born before 1957 (213). Consideration should be given to recommending a dose of measles-mumps-rubella trivalent vaccine (MMR) to personnel born before 1957 who are unvaccinated and who lack (a) a history of prior measles disease; (b) documentation of receipt of one dose of live measles vaccine; or (c) serologic evidence of measles immunity (7). Health care personnel born during or after 1957 should be considered immune to measles when they have (a) documentation of physician-diagnosed measles; (b) documentation of two doses of live measles vaccine on or after their first birthday; or (c) serologic evidence of measles immunity (persons with an ''indeterminate'' level of immunity upon testing should be considered susceptible). Persons born between 1957 and 1984 who received childhood measles immunization were given only one dose of vaccine in their infancy and may require a second dose of vaccine (6).

Serologic screening for measles immunity is not necessary prior to administering measles vaccine unless the medical facility considers it cost-effective or the person to be vaccinated requests it (227–229). When serologic screening before vaccination is done, tracking systems are needed to ensure that those identified as susceptibles are subsequently vaccinated in a timely manner (229). During measles outbreaks, serologic screening before vaccination is not necessary. In outbreak situations, prompt administration of vaccine is necessary to halt disease transmission.

Work restrictions are necessary for personnel who develop measles; they need to be excluded from duty for 4 days after the rash appears. Likewise, personnel nonimmune to measles need to be excluded from duty for 5 days after the first exposure to 21 days following the last exposure to measles.

9. Meningococcal Disease

Community-acquired meningococcal disease typically is caused by a variety of serogroups of *Neisseria meningitidis;* Serogroups B and C cause 46% and 45% of the endemic cases, respectively. Serogroups A, Y, and W–135 account for nearly all the remaining endemic cases (13). In contrast, epidemic meningococcal disease has, since the early 1990s, been caused increasingly by Serogroup C (13, 230, 231).

Nosocomial transmission of *N. meningitidis* is uncommon. In rare instances, when proper precautions were not used, *N. meningitidis* has been transmitted from patient to personnel, through contact with the respiratory secretions of patients with meningococcemia or meningococcal meningitis (1, 232–234) or through handling laboratory specimens (235). Lower respiratory infections caused by *N. meningitidis* may present a greater risk of transmission than either meningococcemia or meningitis (234, 236), especially if the patient has an active, productive cough (236). The risk of personnel acquiring meningococcal disease from casual contact (e.g., cleaning rooms or delivering food trays) appears to be negligible (236).

N. meningitidis infection is likely transmitted by large droplets; the incubation period is from 2–10 days and patients infected with *N. meningitidis* are rendered noninfectious by 24 hours of effective therapy. Personnel who care for patients with suspected *N. meningitidis* infection can decrease their risk of infection by adhering to Droplet Precautions (1).

Postexposure prophylaxis is advised for persons who have had intensive, unprotected contact (i.e., without wearing a mask) with infected patients (e.g., intubating, resuscitating, or closely examining the oropharynx of patients) (13). Antimicrobial prophylaxis can eradicate carriage of *N. meningitidis* and prevent infections in personnel who have unprotected exposure to patients with meningococcal infections (237,238).

Because secondary cases of *N. meninigitidis* occur rapidly (within the first week) following exposure to persons with meningococcal disease (239), it is important to begin prophylactic therapy immediately after an intensive, unprotected exposure, often before results of antimicrobial testing are available. Prophylaxis administered >14 days after exposure is probably of limited or no value (13). Rifampin (600 mg orally every 12 hours for 2 days) is effective in eradicating nasopharyngeal carriage of *N.*

meningitidis (237). Ciprofloxacin (500 mg orally) and ceftriaxone (250 mg IM) in single-dose regimens are also effective in reducing nasopharyngeal carriage of *N. meningitidis* and are reasonable alternatives to the multidose rifampin regimen (13, 238). These antimicrobials may be useful in situations where infections are caused by rifampin-resistant meningococci or when rifampin is contraindicated. Rifampin and ciprofloxacin are not recommended for pregnant women (13, 240, 241).

The quadrivalent A,C,Y,W–135 polysaccharide vaccine has been used successfully to control community outbreaks caused by Serogroup C (13, 230, 231, 240), but its use is not recommended for postexposure prophylaxis in health care settings (13). However, preexposure vaccination may be considered for laboratory personnel who routinely handle soluble preparations of *N. meningitidis* (13, 235).

In the absence of exposures to patients with *N. meningitidis* infection, personnel who are asymptomatic carriers need not be identified, treated, or removed from patient-care activities. Healthy persons may have nasopharyngeal carriage of *N. meningitidis* (237, 242–244). Nosocomial transmission from carriers to personnel has not been reported.

10. Mumps

Mumps transmission has occurred in hospitals and long-term-care facilities housing adolescents and young adults (245, 246). Most cases of mumps in health care personnel have been community acquired.

Mumps is transmitted by contact with virus-containing respiratory secretions, including saliva; the portals of entry are the nose and mouth. The incubation period varies from 12 to 25 days and is usually 16–18 days. The virus may be present in saliva for 6–7 days before parotitis and may persist for up to 9 days after onset of disease. Exposed personnel may be infectious for 12–25 days after their exposure and many infected persons remain asymptomatic (247). Droplet precautions are recommended for patients with mumps; such precautions should be continued for 9 days after the onset of parotitis (1).

An effective vaccination program is the best approach to preventing nosocomial mumps transmission (10). Vaccination with mumps virus vaccine is recommended, unless otherwise contraindicated, for all those who are susceptible to mumps (10, 248); combined MMR vaccine is the vaccine of choice (249), especially when the recipient also is likely to be susceptible to measles, rubella, or both.

Personnel should be considered immune to mumps if they have: (a) Documentation of physician-diagnosed mumps; (b) documentation of receipt of one dose of live mumps vaccine on or after their first birthday; or (c) serologic evidence of immunity (individuals who have an ''indeterminate'' antibody level should be considered susceptible) (10). Most persons born before 1957 are likely to have been infected naturally and may be considered to be immune, even if they may not have had clinically recognized mumps. Outbreaks among highly vaccinated populations have occurred and have been attributed to primary vaccine failure (250).

Work restrictions are necessary for personnel who develop mumps; such restrictions should be imposed for 9 days after the onset of parotitis. Likewise, susceptible personnel who are exposed to mumps need to be excluded from duty from the 12th day after the first exposure until the 26th day after the last exposure.

11. Parvovirus

Human parvovirus B19 (B19) is the cause of erythema infectiosum (fifth disease), a common rash illness that is usually acquired in childhood. Immunocompetent persons infected with B19 may develop an acute, self-limited arthropathy with or without a rash or anemia of short duration. However, patients with preexisting anemia (e.g., patients with sickle cell anemia or thalassemia) may develop aplastic crisis. Immunodeficient patients (e.g., patients with leukemia or AIDS) may become chronically infected with B19 and develop chronic anemia (251, 252).

Transmission of B19 to health care personnel from infected patients appears to be rare. In two investigations of health care personnel exposures to B19, the rate of infection among exposed nurses was not higher than the rate among unexposed controls (253, 254). In another investigation of health care personnel exposed to an undetected patient with chronic B19 infection, none of the susceptible employees became infected (255). Personnel have acquired infection while working in laboratories or during the care of patients with B19-associated sickle cell aplastic crises (256–261).

B19 may be transmitted via contact with infected persons, fomites, or large droplets (253, 262, 263). The incubation period is variable, depending on the clinical manifestation of disease, and ranges from 6–10 days (252). The period of infectivity also varies depending on the clinical presentation or stage of disease. Persons with erythema infectiosum are infectious before the appearance of the rash; those with infection and aplastic crises, up to 7 days after onset of illness; and persons with chronic infection, for years.

Pregnant personnel are at no greater risk of acquiring B19 infection than are nonpregnant personnel; however, if a pregnant woman does acquire B19 infection during the first half of pregnancy, the risk of fetal death (fetal hydrops, spontaneous abortion, and stillbirth) is increased (264, 265). Because of the seriousness of consequences for the fetus, female personnel of childbearing age need to be counseled regarding the risk of transmission of B19 and appropriate infection control precautions (1).

Isolation precautions are not indicated for most patients with erythema infectiousum because they are past their period of infectiousness at the time of clinical illness (259, 264). However, patients in aplastic crisis due to B19 or patients with chronic B19 infection may transmit the virus to susceptible health care personnel or other patients; therefore, patients with preexisting anemia who are admitted to the hospital with febrile illness and transient aplastic crises should remain on Droplet Precautions for 7 days and patients known or suspected to be chronically infected with B19 should be placed on Droplet Precautions on admission and for the duration of hospitalization (1, 256). Work restrictions are not necessary for personnel exposed to B19.

12. Pertussis

Nosocomial transmission of *Bordetella pertussis* has involved both patients and personnel; unimmunized children are at greatest risk (266–270). Serologic studies of health care personnel indicate that personnel may be exposed to and infected with pertussis much more frequently than indicated by the occurrence of recognized clinical illness (267, 269, 271, 272). In one such study, the level of pertussis agglutination antibodies was found to correlate with the degree of patient contact; the prevalence of such antibody was highest in pediatric housestaff (82%) and ward nurses (71%) and lowest in nurses with administrative responsibilities (35%) (267).

Pertussis is highly contagious: Secondary attack rates exceed 80% in susceptible household contacts (273–275). *B. pertussis* transmission occurs by contact with respiratory secretions or large aerosol droplets from the

respiratory tract of infected persons. The incubation period is usually 7–10 days. The period of communicability starts at the onset of the catarrhal stage and extends into the paroxysmal stage. Preventing secondary transmission of pertussis is especially difficult during the early stages of the disease because pertussis is highly communicable in the catarrhal stage when the symptoms are nonspecific and the diagnosis is uncertain.

During nosocomial pertussis outbreaks, the risk of acquiring infection among patients or personnel is often difficult to quantify because exposure is not easily determined. Furthermore, clinical symptoms in adults are less severe than in children and may not be recognized as pertussis. Pertussis should be considered for any person presenting with an acute cough lasting ≥7 days, particularly if accompanied by paroxysms of coughing, inspiratory whoop, or post-tussive vomiting (270, 271).

Prevention of transmission of *B. pertussis* in health care settings involves (a) early diagnosis and treatment of patients with clinical infection; (b) implementation of Droplet Precautions for infectious patients (1); (c) exclusion of infectious personnel from work; and (d) administration of postexposure prophylaxis to persons exposed to infectious patients (269). Patients with suspected or confirmed pertussis who are admitted to the hospital need to be placed on Droplet Precautions until they improve clinically and have received antimicrobial therapy for at least 5 days.

Vaccination of adolescents and adults with whole-cell *B. pertussis* vaccine is not recommended (17) because local and systemic reactions have been observed more frequently in these groups than in children. Acellular pertussis vaccine is immunogenic in adults and has a lower risk of adverse events than does whole-cell vaccine (270, 276). However, the acellular vaccine has not been licensed for use in persons ≥7 years old. Because immunity among vaccine recipients wanes 5–10 years after the last vaccine dose (usually given at 4–6 years of age), personnel may play an important role in transmitting pertussis to susceptible infants. However, additional studies are needed to assess whether booster doses of acellular vaccines are indicated for adults.

Postexposure prophylaxis is indicated for personnel exposed to pertussis; a 14 -day course of either erythromycin (500 mg qid po) or trimethoprim-sulfamethoxazole (1 tablet bid) has been used for this purpose. The efficacy of such prophylaxis has not been well documented, but studies suggest that it may minimize transmission (17, 269, 277, 278). There are no data on the efficacy of newer macrolides (clarithomycin or azithromycin) for prophylaxis of persons exposed to pertussis.

Restriction from duty is indicated for personnel with pertussis, from the beginning of the catarrhal stage through the third week after onset of paroxysms or until 5 days after the start of effective antimicrobial therapy. Exposed personnel do not need to be excluded from duty.

13. Poliomyelitis

The last case of indigenously acquired wild-virus poliomyelitis occurred in the United States in 1979. Since then, all of the cases of endemic poliomyelitis reported in the United States (5–10 endemic cases/year) have been related to the administration of oral polio vaccine (OPV) (19). Although, the risk of transmission of poliovirus in the United States is very low, wild poliovirus may potentially be introduced into susceptible populations with low immunization levels.

Poliovirus is transmitted through contact with feces or urine of infected persons, but can be spread by contact with respiratory secretions and, in rare instances, through items contaminated with feces. The incubation period for nonparalytic poliomyelitis is 3 to 6 days, and usually 7 to 21 days for paralytic polio (279). Communicability is greatest immediately before and after the onset of symptoms, when the virus is in the throat and excreted in high concentration in feces. The virus can be recovered from the throat for 1 week and from feces for several weeks to months following onset of symptoms.

Vaccine-associated poliomyelitis may occur in the recipient (7–21 days after vaccine administration) or susceptible contacts of the vaccine recipient (20–29 days after vaccine administration) (280). Adults have a slightly increased risk of vaccine-associated paralytic polio after receipt of OPV; therefore, inactivated poliovirus vaccine (IPV) should be used when adult immunization is warranted (6, 14, 19). Also, because immunocompromised persons may be at greater risk for developing polio after exposure to vaccine virus, IPV, rather than OPV, is recommended when vaccinating pregnant or immunocompromised personnel or personnel who may have contact with immunocompromised patients (6, 14, 19, 279).

Health care personnel who may have contact with patients excreting wild virus (e.g., imported poliomyelitis case) and laboratory personnel handling specimens containing poliovirus should receive a complete series of polio vaccine, or if previously vaccinated, they may require a booster dose of either IPV or OPV (6, 19). For situations where immediate protection is necessary (e.g., an imported case of wild-virus poliomyelitis requiring care), additional doses of OPV should be given to adults if they have previously completed a polio vaccine series (19).

14. Rabies

Human rabies cases occur primarily from exposure to rabid animals. Cases of human rabies have increased in the United States during the 1990s (281). Laboratory and animal care personnel who are exposed to infected animals, their tissues and excretions are at risk for the disease. Also, rabies transmission to laboratory personnel has been reported in vaccine production and research facilities following exposure to high-titered infectious aerosols (282, 283). Theoretically, rabies may be transmitted to health care personnel from exposures (bite and non-bite) to saliva from infected patients, but no cases have been documented following these types of exposures (284).

It is also possible that rabies can be transmitted when other potentially infectious material (such as brain tissue) comes in contact with nonintact skin or mucous membranes. Bites that penetrate the skin, especially bites to the face and hands, pose the greatest risk of transmission of rabies virus from animals to humans (20). The incubation period for rabies is usually 1 to 3 months but longer periods have been reported (285).

Exposures to rabies can be minimized by adhering to Standard Precautions when caring for persons with suspected or confirmed rabies (1) and by using proper biosafety precautions in laboratories (3). Preexposure vaccination has been recommended for all personnel who (a) work with rabies virus or infected animals; or (b) engage in diagnostic, production, or research activities with rabies virus (3, 20). Consideration also may be given to providing preexposure vaccination to animal handlers when research animals are obtained from the wild, rather than from a known supplier who breeds the animals.

Postexposure prophylaxis has been administered to health care personnel following exposures to patients with rabies (285–287) (Table 1) but decisions regarding postexposure prophylaxis should be made on a case-by-case basis

after discussion with public health authorities (20).

15. Rubella

Nosocomial transmission of rubella has occurred from both male and female personnel to other susceptible personnel and patients as well as from patients to susceptible personnel and other patients (288–295).

Rubella is transmitted by contact with nasopharyngeal droplets from infected persons. The incubation period is variable but may range from 12 to 23 days; most persons develop the rash 14–16 days after exposure. The disease is most contagious when the rash is erupting, but virus may be shed from 1 week before to 5–7 days after the onset of the rash (296). Rubella in adults is usually a mild disease, lasting only a few days; 30% to 50% of cases may be subclinical or inapparent.

Droplet Precautions are used to prevent transmission of rubella. Infants with congenital rubella may excrete virus for months to years; therefore, when caring for such patients it is advisable to use Contact Precautions for the first year of life, unless nasopharyngeal and urine cultures are negative for rubella virus after 3 months of age (1).

Ensuring immunity among all health care personnel (male and female) is the most effective way to eliminate nosocomial transmission of rubella (6, 7, 12, 248, 297). Persons should be considered susceptible to rubella if they lack (a) documentation of one dose of live rubella vaccine on or after their first birthday; or (b) laboratory evidence of immunity (persons with indeterminate levels are considered susceptible). A history of past rubella infection is unreliable and should not be considered indicative of immunity to rubella. Although birth before 1957 is generally considered acceptable evidence of rubella immunity, a dose of MMR has been recommended for those health care personnel that do not have laboratory evidence of immunity (7). In addition, birth before 1957 is not considered acceptible evidence of rubella immunity for women of childbearing age (7). Voluntary immunization programs are usually inadequate to ensure personnel protection (298, 299). Because many health departments mandate rubella immunity for health care personnel, personnel health programs should consult with their local or state health departments before establishing policies for their facilities.

Serologic screening of personnel for immunity to rubella need not be done before vaccinating against rubella unless the medical facility considers it cost-effective or the person getting vaccinated requests it (227–229). When serologic screening before vaccination is done, tracking systems are needed to ensure that those identified as susceptible are subsequently vaccinated in a timely manner (229). Likewise, during rubella outbreaks, serologic screening is not necessary. The ACIP states that rubella vaccination is contraindicated among pregnant women, but administering rubella vaccine to women not known to be pregnant is justifiable without prevaccination screening (12); pregnant women who are already immune to rubella are not at increased risk for adverse advents (300). MMR trivalent vaccine is the vaccine of choice for rubella, especially when the recipient also is likely to be susceptible to measles and/or mumps (Table 2).

Work restrictions are necessary for personnel who develop rubella; ill personnel need to be excluded from duty for 5 days after the rash appears. Likewise, personnel susceptible to rubella require exclusion from duty from the 7th day after the first exposure through the 21st day after the last exposure (Table 3).

16. Scabies and Pediculosis

a. Scabies. Scabies is caused by infestation with the mite *Sarcoptes scabiei.* The conventional (typical) clinical presentation of scabies includes intense pruritus and cutaneous tracks, where mites have burrowed into the skin. Crusted or ''Norwegian'' scabies may develop among immunocompromised and elderly individuals because their skin may become hyperkeratotic, and pruritus may not be present, which also makes diagnosis difficult. In conventional scabies 10–15 mites are present, while in crusted scabies thousands of mites are harbored in the skin, increasing the potential for transmission (301, 302).

Nosocomial outbreaks of scabies have occurred in a variety of health care settings including intensive care units (303), rehabilitation centers (304), long-term care facilities (305–307), hospital wards (308, 309), and a health care laundry (310). In recent years there has been an increase in the occurrence of crusted scabies among immunocompromised patients, particularly persons with HIV, which has led to the transmission of scabies among personnel, patients and their families (303, 304, 306–308, 310–315).

Nosocomial transmission of scabies occurs primarily through skin-to-skin contact with an infested person (301, 316, 317). Personnel have acquired scabies while performing patient-care duties such as sponge-bathing, lifting, or applying body lotions (301, 302, 312, 318). Transmission by casual contact, such as by holding hands, or via innaminate objects, such as infested bedding, clothes, or other fomites, has been reported infrequently (310, 319, 320).

The use of Contact Precautions when taking care of infested patients prior to application of scabicides can decrease the risk of transmission to personnel (1, 302). Routine cleaning of the environment of patients with typical scabies, especially bed linens and upholstered furniture, will aid in eliminating the mites. Additional environmental cleaning procedures may be warranted for crusted scabies (301, 302, 321, 322).

Recommendations for treatment and control of scabies in health care institutions have been published previously (301, 302, 321–325). The recommended topical scabicides include permethrin cream (5%), crotamiton (10%), or lindane (1%) lotion; resistance to lindane has been reported (321, 324). Single-dose oral ivermectin has recently been shown to be an effective therapy for scabies (313, 325, 326), but has not received Federal Drug Administration approval for this purpose.

Most infested health care workers have typical scabies with low mite loads (311, 327); a single correct application of a scabicide is adequate and immediately decreases the risk of transmission (316–318, 328–331). If personnel remain symptomatic after initial treatment, a repeat application of scabicide may be needed in 7–10 days. Persistent symptoms likely represent newly hatched mites rather than new infestation. Patients with crusted scabies may require repeated treatments and should be observed for recurrence of the mite infestation (301, 302, 306, 321). Personnel who are exposed to scabies, but lack signs of infestation, do not require prophylactic treatment with scabicides.

Restrictions from patient care are indicated for personnel infested with scabies until after they receive initial treatment. They should be advised to report for further evaluation if symptoms do not subside.

b. Pediculosis. Pediculosis infestation is caused by three species of lice: *Pediculus humanus capitus* (human head louse), *Pediculus humanus corporis* (human body louse), or *Phthirus pubis* (pubic or crab louse).

Head lice are transmitted by head-to-head contact or by contact with infested fomites such as hats, combs, or brushes.

Nosocomial transmission, while not common, has occurred (301).

Body lice are usually associated with poor hygiene and overcrowded conditions. Transmission occurs by contact with the skin or clothing of an infested person. Nosocomial transmission is unlikely.

Pubic lice are primarily found in the pubic hair but can be found in the axilla, eyelashes or eyebrows. Transmission occurs primarily through intimate physical or sexual contact. Transmission by fomites, such as toilet seats or bedding, is uncommon. Nosocomial transmission is very unlikely.

Recommendations for control of pediculosis have been published previously (301, 322, 332). The drugs recommended for treatment include permethrin cream 1%, pyrethrins with piperonyl butoxide, malathion 0.5%, or lindane 1% (323–325, 332). Health care personnel exposed to patients with pediculosis do not require treatment unless they show evidence of infestation.

Restriction from patient care is indicated for personnel infested with pediculosis until after they receive initial treatment. If symptoms do not subside following initial treatment, they should be advised to report for further evaluation.

17. Staphylococcus aureus Infection and Carriage

Staphylococcal carriage and infection occur frequently in humans. In hospitals the most important sources of *S. aureus* are infected and colonized patients. Previously, methicillin-susceptible (but penicillin-resistant) *S. aureus* (MSSA) accounted for most staphylococcal infections. However, in recent years, methicillin-resistant *S. aureus* (MRSA) has accounted for approximately 80% of all *S. aureus* isolates reported to the National Nosocomial Surveillance System (333–335). The epidemiology of MRSA does not appear to differ from that of MSSA, except that outbreaks of MRSA tend to occur more frequently among elderly or immunocompromised patients or among patients with severe underlying conditions (333, 336).

Nosocomial transmission of *S. aureus* occurs primarily via the hands of personnel, which can become contaminated by contact with the colonized or infected body sites of patients (333, 337). Hospital personnel who are infected or colonized with *S. aureus* also can serve as reservoirs and disseminators of *S. aureus* (338–341) and infected dietary personnel have been implicated in staphylococcal food poisoning (342). The role of contaminated environmental surfaces in transmission of *S. aureus* remains controversial, although heavy contamination of fomites may facilitate transmission to patients via personnel hands (333).

The incubation period for *S. aureus* infections varies by type of disease: foodborne illness is 30 minutes to 6 hours; bullous impetigo is 1–10 days; toxic-shock syndrome is usually 2 days; and other types of infections it is variable (343).

Carriage of *S. aureus* is most common in the anterior nares, but other sites, such as the hands, axilla, perineum, nasopharynx and oropharynx may also be involved (333). The frequency of nasal carriage of *S. aureus* among health care personnel ranges between 20% and 90%, but fewer than 10% of healthy nasal carriers disperse the organisms into the air (339). Nasal carriers with upper respiratory symptoms can disseminate the organism more effectively (339). Carriage of *S. aureus* in the nares has been shown to correspond to hand carriage (334) and persons with skin lesions caused by *S. aureus* are more likely than asymptomatic nasal carriers to disseminate the organism.

Culture surveys of personnel can detect carriers of *S. aureus* but do not indicate which carriers are likely to disseminate organisms. Thus, such surveys are not cost-effective and may subject personnel with positive cultures to unnecessary treatment and removal from duty. A more reasonable approach is to conduct active surveillance for nosocomial *S. aureus* infections. Culture surveys may be indicated if, after a thorough epidemiologic investigation, personnel are linked to infections. Such implicated personnel can then be removed from clinical duties until carriage is eradicated (333, 338, 344–346).

Several antimicrobial regimens have been used successfully to eradicate staphylococcal carriage in health care personnel. These regimens include orally administered antimicrobial agents (e.g., rifampin, clindamycin, or ciprofloxacin) alone or in combination with another oral (e.g., trimethoprim sulfamethoxazole) or topical (mupirocin) antimicrobial (345, 347–358). Resistant *S. aureus* strains have emerged following the use of the above oral or topical antimicrobial agents for eradication of *S. aureus* colonization (16, 202, 345, 349, 359–361). Thus, antimicrobial treatment to eradicate carriage may be best if limited to personnel carriers who are epidemiologically linked to disease transmission. Nosocomial transmission of *S. aureus* can be prevented by adherence to Standard Precautions and other forms of transmission based precautions, as needed (1).

Restriction from patient-care activities or food-handling is indicated for personnel who have draining skin lesions that are infected with *S. aureus* until they have received appropriate therapy and the infection has resolved. No work restrictions are necessary for personnel who are colonized with *S. aureus*, unless they have been epidemiologically implicated in *S. aureus* transmission within the facility.

18. Streptococcus, Group A

Group *A Streptococcus* (GAS) has been transmitted from infected patients to health care personnel following contact with infected secretions (362–364), and the infected personnel have subsequently developed a variety of GAS-related illnesses (e.g., toxic-shock-like syndrome, cellulitis, lymphangitis, and pharyngitis). Health care personnel who were GAS carriers have infrequently been linked to sporadic outbreaks of surgical site, postpartum or burn wound infections (365–371) and foodborne transmission of GAS causing pharyngitis (372). In these outbreaks GAS carriage was documented in the pharynx (364, 367, 373), the skin (364, 365), the rectum (364, 370), and the female genital tract of the infected personnel (364, 369, 374).

The incubation period for GAS pharyngitis is 2–5 days, and is 7–10 days for impetigo. The incubation period is variable for other GAS infections (375).

Culture surveys to detect GAS carriage among personnel are not warranted unless personnel are epidemiologically linked to cases of nosocomial infection (373). In instances where thorough epidemiologic investigation has implicated personnel in nosocomial transmission, cultures may be obtained from skin lesions, the pharynx, rectum, and vagina; GAS isolates obtained from personnel and patients can be serotyped to determine strain relatedness (368). Treatment of personnel carriers needs to be individualized because (a) experience is limited regarding the treatment of personnel carriers implicated in GAS outbreaks; and (b) carriage of the organism by personnel may be recurrent over long periods of time (364–366, 369). Contact is the major mode of transmission of GAS in these health care settings. Airborne transmission during outbreaks has been suggested by several investigators, and some have demonstrated that exercising and changing of clothing can lead to airborne dissemination of GAS from

rectal and vaginal carriage (364, 369, 370, 374). Nosocomial transmission of GAS to personnel can be prevented by adherence to Standard Precautions or other transmission-based precautions as needed (1).

Restriction from patient-care activities and food-handling is indicated for personnel with GAS infections until 24 hours after they have received appropriate therapy. However, no work restrictions are necessary for personnel who are colonized with GAS, unless they have been epidemiologically linked to transmission of infection within the facility.

19. Tuberculosis

Nosocomial transmission of tuberculosis (TB) is well documented, but such transmission in the United States is generally low. However, the risk may be increased in health care facilities located in communities with (a) high rates of HIV; (b) high numbers of persons from TB-endemic countries; and (c) communities with a high prevalence of TB infection (376, 377). In some areas in the USA, the incidence and prevalence of multidrug-resistant *Mycobacterium tuberculosis* (MDR–TB) also have increased, and nosocomial MDR–TB outbreaks have occurred (378–384). The increased risk of occupational acquisition of TB by health care personnel has been reported for decades and it dramatically decreased following the introduction of effective antituberculous drugs (385, 386). Skin-test conversion rates among health care personnel following routine skin testing have ranged from 0.11 % to 10%. Among health care personnel with known exposure to an infectious TB patient or involved in prolonged nosocomial outbreaks of TB, the skin-test conversion rates have ranged from 18% to 55% (378–380, 383, 384, 386–393).

The transmission of TB in health care facilities has been primarily caused by incomplete implementation of recommended TB infection control measures (388). In 1994, CDC published detailed recommendations for the prevention of transmission of TB in health care settings, Guidelines for Preventing the Transmission of Mycobacterium tuberculosis in Health Care Facilities, 1994 (377). A summary of the recommendations pertaining to personnel health follow.

a. Strategies for prevention of transmission of TB. The risk of transmission of TB to or from personnel in a health care facility varies according to the type and size of the facility, the prevalence of TB in the community, the patient population served by the facility, the occupational group the person represents, the area of the facility where the person works, and the effectiveness of the facility's TB-control program. A detailed risk assessment is essential in identifying the nature of TB control measures that are appropriate for a particular facility as well as for specific areas and occupational groups within a facility (377, 394). A risk assessment should include the following: (a) Review of the community TB profile; (b) review of the number of TB patients who were treated in each area of the facility; (c) review of the drug-susceptibility patterns of TB isolates from patients treated in the facility; (d) an analysis of purified protein derivative (PPD) skin-test results of health care personnel by work area or occupational group; (e) an evaluation of infection control parameters including isolation policies, laboratory diagnostic capabilities, and antitubercular therapy regimens; (f) an observational review of TB infection control practices; and (g) evaluation of the function and maintenance of environmental controls (377).

Transmission of TB can be minimized by developing and implementing an effective TB-control program based on a hierarchy of controls, namely, (a) administrative controls, (b) engineering controls, and (c) personal respiratory protection (377, 379, 381, 386, 388, 394, 395).

b. TB screening program. A tuberculosis screening program for personnel is an integral part of a health care facility's comprehensive TB control program. The screening program should be based on the facility specific risk assessment.

Baseline PPD testing of all personnel [including personnel with a history of Bacille Calmette-Guérin vaccination (BCG)] during their pre-employment physical examination or when applying for hospital privileges will identify personnel who have been previously infected. For the baseline testing a two-step procedure can be used to minimize the likelihood of confusing reactivity from an old infection (boosting) with reactivity from a recent infection (conversion). Criteria used for interpretation of a PPD test reaction may vary depending on the (a) purpose (diagnostic or epidemiologic) of the test; (b) prevalence of TB infection in the population being tested; (c) immune status of the host; and (d) previous receipt of TB immunization. Detailed recommendations have been published for performing and interpreting skin tests (377, 396, 397).

c. Follow-up evaluation. The risk assessment will identify which health care personnel have the potential for exposure to *M. tuberculosis* and determine how frequently they should receive PPD testing. At minimum, annual PPD testing is indicated for personnel with the potential for exposure to TB.

It is also important to obtain an initial chest x-ray on personnel with positive PPD-test reactions, documented PPD-test conversions, or pulmonary symptoms suggestive of TB. There are no data to support the use of routine chest x-ray examinations on asymptomatic PPD test-negative personnel. In addition, personnel who have positive PPD-test reactions but also received adequate preventive treatment do not need repeat chest films unless they have pulmonary symptoms suggestive of TB. Repeat chest x-ray examinations of such persons have not been shown to be beneficial or cost-effective in monitoring persons for development of disease. However, more frequent monitoring for symptoms of TB may be considered for personnel who convert their PPD test; those persons, if infected, are at increased risk of developing active TB (e.g., HIV-infected or otherwise severely immunocompromised persons).

d. Management of personnel after exposure to TB. It is important to perform PPD tests on personnel as soon as possible after TB exposures are recognized. Such immediate PPD testing establishes a baseline by which to monitor subsequent PPD tests. A PPD test, performed 12 weeks after the last exposure, will indicate if infection has occurred. Persons already known to have reactive PPD tests need not be retested. Personnel with evidence of new infection (i.e., PPD-test conversions) need to be evaluated for active TB. If active TB is not diagnosed, preventive therapy should be considered (377).

e. Preventive therapy. For workers with positive PPD tests who were likely exposed to drug-susceptible TB, preventive therapy with isoniazid is indicated, unless there are contraindications to such therapy (377, 397). Alternative preventive regimens have been proposed for persons who have positive PPD tests following exposure to drug-resistant TB (398).

f. Work restrictions. Personnel with active pulmonary or laryngeal TB may be highly infectious; exclusion from duty is indicated until they are noninfectious. If personnel are excluded from duty because of active TB, the facility should have documentation from their health care providers that personnel are noninfectious before they are allowed to return to duty. The

documentation needs to include evidence that (a) adequate therapy is being received; (b) the cough has resolved; and (c) three consecutive sputum acid-fast-bacilli (AFB) smears, collected on different days, are negative. After personnel resume duty and while they remain on anti-TB therapy, periodic documentation from their health care providers is needed to show that effective drug therapy is being maintained for the recommended time period and that their sputum AFB smears continue to be negative.

Work restrictions are not necessary for personnel receiving preventive treatment for latent TB (positive PPD test without active disease) or for personnel with latent TB who do not accept preventive therapy. However, these personnel should be instructed to seek evaluation promptly if they develop symptoms suggestive of TB.

g. Considerations for Bacille Calmette-Guérin Vaccine. BCG has not been routinely used in the United States to protect health care personnel. Nevertheless, because of the resurgence of TB in the United States and new information about the protective effect of BCG (399, 400), the role of BCG vaccination in the prevention and control of TB in the country has been re-evaluated (401). The following is a summary of the joint statement by the Advisory Council for the Elimination of Tuberculosis and ACIP regarding the use of BCG in health care personnel.

Two recent meta-analyses of 18 and 26 BCG studies, respectively, indicate that the efficacy of BCG vaccine in preventing serious TB in children is high (>80%) and suggested 50% efficacy in adults (399, 400); however, the protective efficacy of the vaccine in adolescents and adults, including health care personnel and HIV-infected children and adults, has not been determined (401).

BCG vaccination may be indicated for health care personnel in a few geographic areas where the prevalence of MDR–TB is high, transmission of TB is likely, and TB infection control measures have not been successful in controlling nosocomial transmission (401). BCG vaccination often results in local adverse effects (such as muscular soreness, erythema, purulent drainage, axillary or cervical lymphadenopathy for as long as 3 months after vaccination); serious long-term complications (such as musculoskeletal lesions, multiple lymphadenitis, and disseminated BCG disease) are infrequent (402–404). The safety of BCG vaccination in immunocompromised populations (i.e., immunocompromised from immune deficiency diseases, HIV infection, leukemia, lymphoma, or generalized malignancy, or immunosuppressed as a result of therapy with corticosteroids, alkylating drugs, antimetabolites, or radiation) has not been determined by adequate epidemiologic studies. However, because of the possibility of disseminated BCG infection in such persons (405–408), BCG vaccination is not recommended for immunocompromised personnel (401).

PPD testing is not contraindicated for persons who have received BCG vaccine and can be used to support or exclude the diagnosis of infection with *M. tuberculosis* (401). PPD-test reactivity caused by BCG vaccination wanes with time (409–411) and is unlikely to persist >10 years after vaccination in the absence of infection with *M. tuberculosis* (409, 410). After a person has been vaccinated with BCG, the presence or size of a PPD-test reaction cannot be used as a predictor of BCG vaccine efficacy in the vaccine recipient (412, 413), or as a determinant as to whether the reaction is caused by infection with *M. tuberculosis* or the prior BCG vaccination (414). However, a BCG-vaccinated person who has a PPD test reaction of ≥10 mm induration is considered infected with TB, especially if the vaccinee is a contact of a person with infectious TB, is from a country with high prevalence of TB, or is continually exposed to populations in which the prevalence of TB is high (401).

20. Vaccinia (Smallpox)

Because of the effective use of smallpox vaccine (vaccinia virus vaccine), the World Health Organization declared the world free of smallpox in 1980. The smallpox vaccine licensed for use in the United States is derived from infectious vaccinia virus. After vaccination, the virus can be cultured from the vaccination site until the scab has separated from the skin (2–21 days after vaccination); thus, susceptible persons may acquire vaccinia from a recently vaccinated person (415–418). Covering the vaccination site and washing hands following contact with the vaccination site (including bandages) will prevent transmission. Recently, recombinant vaccinia viruses have been engineered. There is a theoretical risk that transmission could occur from contact with contaminated dressings or by contact with recombinant vaccine, but no such transmission has been reported among personnel who provide care to the recombinant vaccine recipients. Infections also have been reported among laboratory personnel who handle viral cultures or materials contaminated with vaccinia or recombinant viruses (16, 155).

Smallpox vaccination is indicated for personnel who work directly with orthopox viruses (e.g., monkeypox, vaccinia, variola) or in animal-care areas where orthopox-viruses are studied. In selected instances, vaccination may be considered for personnel who provide care to recipients of recombinant vaccinia vaccine (7, 16). Personnel who receive the vaccine may continue to have contact with patients if the vaccination site is covered and handwashing is maintained (16).

21. Varicella

Nosocomial transmission of varicella-zoster virus (VZV) is well recognized (419–430). Sources for nosocomial exposures have included patients, health care personnel, and visitors (including the children of personnel) with either varicella or herpes zoster.

All susceptible adults in health care settings are at risk for varicella and its complications. However, certain persons are at higher risk for severe disease and secondary complications; they include pregnant women, premature infants born to varicella-susceptible mothers; infants born at <28 weeks gestation or weighing 1000 grams, regardless of maternal immune status; and immunocompromised patients (11). During 1990–1994, while <5% of varicella cases occurred among adults 20 years old, they accounted for 55% of varicella-related deaths.

The incubation period for varicella is usually 14 to 16 days, but may be from 10 to 21 days after exposure. In persons who receive postexposure varicella-zoster immune globulin the incubation period may be up to 28 days after exposure. Transmission of infection may occur from 2 days before onset of rash and usually up to 5 days after rash onset, although, in immunocompromised persons transmission may occur during the period of eruption of lesions (431).

It is generally advisable to allow only personnel who are immune to varicella to take care of patients with VZV. Because of the possibility of transmission to and development of severe illness in high-risk patients, personnel with localized zoster should not take care of such patients until all lesions are dry and crusted (11, 432). Personnel with localized zoster may not transmit infection to immunocompetent patients if their lesions can be covered. However, some institutions may exclude personnel with zoster from work until their lesions dry and crust (428).

VZV is transmitted by the contact with infected lesions and, in hospitals, airborne transmission from patients with varicella or zoster to susceptible persons who had no direct contact with the infected patient has occurred (432–436). Adherence to Airborne and Standard Precautions when caring for patients with known or suspected VZV infection can reduce the risk of transmission to personnel (1). Management of clusters of VZV infection in health care settings also generally includes (a) isolation of patients with varicella and of exposed susceptible patients (1); and (b) control of air flow (negative pressure) in isolation rooms (435–437).

a. Varicella screening and vaccination. Serologic tests have been used to assess the accuracy of reported histories of chickenpox (299, 429, 438–440). In adults, a history of varicella is highly predictive of serologic immunity (97% to 99% seropositive). The majority of adults who have negative or uncertain histories of varicella are also seropositive (71% to 93%). In health care institutions, serologic screening of personnel who have negative or uncertain histories is likely to be cost effective, depending on the relative costs of the test and vaccine (7, 11).

A variety of methods have been used for detecting of varicella antibody, but a commercially available latex agglutination test will provide prompt, sensitive and specific serologic results at a reasonable cost. Routine testing for varicella immunity following vaccination is not necessary because 99% of persons are seropositive after the second dose. Moreover, seroconversion does not always result in full protection against disease. However, testing vaccinees following exposures may be warranted. In addition, vaccinated persons who are exposed to varicella but lack antibody may be retested in 5–6 days to determine if they are antibody positive after the second test and, therefore, unlikely to develop varicella (11).

In March 1995, a live attenuated varicella vaccine was licensed for use in the United States. Administration of varicella vaccine is recommended for all susceptible health care personnel, especially those who will have close contact with persons at high risk for serious complications (11, 293, 441, 442). Effective varicella vaccination programs require two doses of vaccine to achieve high seroconversion rates in adults (441); the need for and response to booster doses of vaccine are unknown. Vaccination provides approximately 70% protection against infection and 95% protection against severe disease in follow-up from 7–10 years after vaccination (11). Cases of varicella have occurred among vaccinees following exposure to wild-type virus (''breakthrough infection''). Data from vaccine trials indicate that 1% to 4% of vaccine recipients per year develop chickenpox, depending on the vaccine lot and interval following vaccination (7, 11). However, vaccinated persons have milder disease (e.g., afebrile; a mean of 50 skin lesions which are often not vesicular; and shorter duration of illness) compared with unvaccinated individuals (e.g., febrile with several hundred vesicular lesions) (443, 444), and are less likely to transmit disease than unvaccinated persons.

The rate of transmission of disease from vaccinees who contract varicella is low for vaccinated children, but has not been studied in adults. Active surveillance for 1 to 8 years following vaccination of 2141 children between 1981 and 1989 in 10 different trials (7) resulted in reports of breakthrough infections in 78 children, which further resulted in secondary cases in 12.2% (11/90) of vaccinated siblings. Illness was mild in both index and secondary cases. There also has been a report of transmission from a vaccinated child, in whom breakthrough disease occurred, to a susceptible mother (7).

All information currently available on vaccine efficacy and the persistence of antibody in vaccinees is based on research conducted in settings where infection is highly prevalent and not affected by the wide use of vaccine. Thus, the extent to which the protection provided by vaccination has been increased by boosting from exposure to natural virus and whether longer term immunity may wane as the prevalence of natural VZV decreases are unknown.

b. Transmission of vaccine virus. In clinical trials, 3.8% of children and 5.5% of adolescents and adults developed a non-localized rash (median, 5 lesions) after the first injection, and 0.9% of adolescents and adults developed a non-localized rash after the second injection. Available data suggest that healthy children have limited potential to transmit vaccine virus to susceptible contacts (estimated to be <1%), but that the risk of transmission from immunocompromised vaccinees is higher and possibly related to the occurrence of rash following vaccination (445, 446). Tertiary transmission of vaccine virus to a second healthy sibling of a vaccinated leukemic child has also occurred (99). These data suggest that healthy vaccinated individuals have a very small risk of transmitting vaccine virus to their contacts; this risk may be higher in those who develop a varicella-like rash following vaccination.

Although the risk of transmission of vaccine virus from vaccinees is not known, the risk, if any, appears to be very low and the benefits of vaccinating susceptible health care personnel clearly outweigh this potential risk. As a safeguard, institutions may wish to consider precautions for vaccinated personnel who develop a rash or who will have contact with susceptible persons at high risk for serious complications.

c. Management of health care personnel exposed to varicella. When unvaccinated susceptible personnel are exposed to varicella, they are potentially infective 10 to 21 days after exposure and exclusion from duty is indicated from the 10th day after the first exposure through the 21st day after the last exposure, or if varicella occurs, until all lesions dry and crust (Table 3) (248).

If vaccinated health care personnel are exposed to varicella, they may be serotested immediately after exposure to assess the presence of antibody (442). If they are seronegative they may be excluded from duty or monitored daily for development of symptoms. Exclusion from duty is indicated if symptoms (fever, upper respiratory, and/or rash) develop.

Vaccination should be considered for exposed unvaccinated health care personnel without documented immunity (430, 442). However, because the efficacy of postexposure vaccination is unknown, persons vaccinated following an exposure should be managed as previously recommended for unvaccinated persons.

The use of postexposure varicella zoster immune globulin (VZIG) is not recommended for routine use among immunocompetent health care personnel (11). VZIG can be costly, does not necessarily prevent varicella, and may prolong the incubation period by a week or more, thus extending the time that personnel will be restricted from duty. The use of VZIG may be considered for immunocompromised (e.g., HIV-infected) or pregnant health care personnel (11, 447). Postexposure use of acyclovir may be effective and less costly than the use of VZIG in some susceptible persons (447). However, additional data concerning the efficacy of acyclovir for postexposure prophylaxis are needed before such use can be recommended (7, 11, 430, 448).

22. Viral Respiratory Infections

Viral respiratory infections are common problems in health care

settings. Nosocomial respiratory infections can be caused by a number of viruses, including adenoviruses, influenza virus, parainfluenza viruses, respiratory syncytial virus (RSV), and rhinoviruses. Because influenza and RSV substantially contribute to the morbidity and mortality associated with viral pneumonia and both have been well studied epidemiologically, this section focuses on prevention of these two viral infections among personnel. Additional information on influenza and RSV can be found in the Guideline for Prevention of Nosocomial Pneumonia (449).

a. Influenza. Nosocomial transmission of influenza has been reported in acute and long-term care facilities (450–455). Transmission has occurred from patients to health care personnel (452, 454), from health care personnel to patients (456), and among health care personnel (455, 457–462) .

Influenza is believed to be transmitted from person to person by direct deposition of virus laden large droplets onto the mucosal surfaces of the upper respiratory tract of an individual during close contact with an infected person, as well as by droplet nuclei or small-particle aerosols (19, 279, 463). While the extent of transmission by virus-contaminated hands or fomites is not known, it is not the primary mode of transmission (463).

The incubation period of influenza is usually 1–5 days, and the period of greatest communicability is during the first 3 days of illness. However, virus can be shed before the onset of symptoms and up to 7 days after illness onset (464–466). Persons at greatest risk for influenza-related complications include (a) persons ≥65 years of age; (b) residents of nursing homes and other chronic-care facilities; (c) persons with chronic pulmonary or cardiovascular conditions; and (d) persons with diabetes mellitus (15). Adherence to Droplet Precautions may prevent nosocomial transmission (1).

Administration of influenza vaccine to health care personnel, including pregnant women (7), before the beginning of each influenza season can help to (a) reduce the risk of influenza infection to health care personnel; (b) prevent transmission of influenza from personnel to persons at high risk of complications; and (c) reduce personnel absenteeism during community outbreaks. Innovative methods may be needed to increase influenza immunization rates among health care personnel (467). Immunization rates may also be increased by providing data to health care personnel on the low rates of systemic reactions to influenza vaccine among healthy adults (468).

During institutional outbreaks of influenza, prophylactic antiviral agents (e.g., amantadine and rimantadine) may be used in conjunction with influenza vaccine to reduce the severity and duration of illness among unvaccinated health care personnel. Amantadine and rimantadine may be administered for 2 weeks following personnel vaccination or, in unvaccinated personnel, for the duration of influenza activity in the community (15, 449, 469, 470).

b. Respiratory Syncytial Virus (RSV). Nosocomial transmission of RSV is greatest during the early winter when community RSV outbreaks occur; patients, visitors, and health care personnel may transmit the virus in the health care setting. RSV infection is most common among infants and children, who are likely to develop more severe disease. Because RSV infection can also occur simultaneously with other respiratory viruses, it may go unrecognized (471, 472). Nosocomial transmission has been reported most frequently among newborn and pediatric patients (473, 474), but outbreaks associated with substantial morbidity and mortality have been reported among adults in bone marrow transplant centers (475), intensive care units (476), and long-term care facilities (477, 478).

RSV is present in large numbers in the respiratory secretions of symptomatic persons infected with the virus and can be transmitted directly via large droplets during close contact with such persons, or indirectly via hands or fomites that are contaminated with RSV. Hands can become contaminated through handling of infected persons' respiratory secretions or contaminated fomites, and transmit RSV by touching the eyes or nose (449). The incubation period ranges from 2–8 days; 4–6 days is most common. In general, infected persons shed the virus for 3–8 days, but young infants may shed virus for as long as 3–4 weeks. Adherence to Contact Precautions effectively prevents nosocomial transmission.

c. Work restrictions. Because large numbers of personnel may have viral respiratory illnesses during the winter, it may not be possible to restrict infected personnel from all patient-care duties. Nevertheless, it may be prudent to restrict personnel with acute viral respiratory infections from the care of high-risk patients during community outbreaks of RSV and influenza (479, 480).

E. Pregnant Personnel

Immunologic changes occur during pregnancy, primarily depression of certain aspects of cell-mediated immunity such as decreased levels of helper T cells. These changes permit fetal development without rejection but generally do not increase maternal susceptibility to infectious diseases. Occupational acquisition of infections is of special concern to female health care personnel of childbearing age for several reasons. Some infections, such as varicella, may be more severe during pregnancy. Transplacental infection with viruses such as parvovirus, varicella, and rubella has been associated with abortion, congenital anomaly, and mental retardation. Other diseases in which the infectious agent may be transmitted to the fetus include cytomegalovirus, hepatitis B, herpes simplex, influenza, and measles. In addition, certain drugs used to treat or prevent some infections, for example tuberculosis, may be contraindicated during pregnancy.

In general, pregnant health care personnel do not have an increased risk of acquiring infections in the workplace. The risks to pregnant personnel and methods for prevention are discussed in the various sections of this document and are summarized in Table 6. Female personnel of childbearing age should be strongly encouraged to receive immunizations for vaccine-preventable diseases prior to pregnancy. Such personnel may also decrease their risk of acquiring infection by adhering to appropriate infection control practices, including Standard Precautions when caring for all patients. Additional information on occupational risks for pregnant health care personnel has been published elsewhere (480–482).

F. Laboratory Personnel

Despite the availability of improved engineering controls, work practices, and personal protective equipment, laboratory personnel remain at risk for occupational acquisition of infectious agents (3, 16, 48, 144, 155, 235, 483, 484). Furthermore, newer technologies that require the use of large and/or concentrated specimens may further increase the risk of occupationally acquired infections among laboratory personnel (485).

In a review of laboratory-acquired infections from 1950–1974 >4000 laboratory associated infections were documented in the United States (483) the 10 most commonly reported infections were brucellosis, Q Fever, hepatitis, especially hepatitis B, typhoid fever, tularemia, tuberculosis,

dermatomycosis, venezuelan equine encephalitis, psittacosis, and coccidioidomycosis. However, laboratory-associated infections also have been due to a wide variety of other pathogens (155, 483, 484). More recently, viral agents have accounted for a larger proportion of laboratory associated infections than have bacterial infections (484–489).

Laboratory personnel may acquire infection by aerosolization of specimens, mouth pipetting, or percutaneous injury. Information on the risks of laboratory-associated infections and appropriate biosafety procedures and precautions for laboratories have been published (3, 4, 485, 490–492).

In addition to biosafety precautions, preventive measures (e.g., immunizations and postexposure prophylaxis) also may be indicated for laboratory personnel who handle infectious agents. In this document, disease specific information and guidance are provided for prevention of laboratory-associated infections and for management of laboratory personnel exposed to infectious agents. Health care institutions need to ensure that laboratory personnel who may be exposed to infectious agents are well informed about the risks of acquiring infections and biosafety procedures to prevent transmission of infectious agents.

G. Emergency Response Personnel

Emergency medical technicians, firemen, policemen, and others who attend to and transport patients to the hospital may be exposed to recognized or undiagnosed transmissible infectious diseases in the patients with whom they come in contact. Subtitle B (42 U.S.C. 300ff–80) of the 1990 Ryan White Comprehensive AIDS Resources Emergency Act requires the establishment of notification systems in each State to ensure that emergency response employees (including emergency medical technicians, firefighters, and the like) are informed when they have been exposed to an emergency medical patient with an infectious, potentially fatal disease such as HIV or meningococcemia. CDC published a list of diseases for which emergency response employees must be informed of an exposure (493).

H. Latex Hypersensitivity

Since the introduction of Universal Precautions, the use of latex gloves has become commonplace in health care settings (494, 495). The increased use of latex gloves has been accompanied by increasing reports of allergic reactions to natural rubber latex among health care personnel (496–501).

Natural rubber latex is a combination of heat and water-soluble proteins derived from the tree *Hevea braziliensis*. However, total protein concentrations and allergenicity are not always directly correlated (502), suggesting that total protein concentrations are not necessarily a measure of the allergenic properties of latex gloves. Latex gloves may be labeled ''hypoallergenic'', but this designation refers to nonlatex additives in gloves and does not reflect reduced allergenicity to latex (503). In one study, nearly 50% (11/24) of the lots of hypoallergenic gloves tested had measurable latex allergen (504). The FDA has proposed labeling of all the medical devices that contain natural rubber latex (505). Also, the total protein content of latex gloves may vary considerably from brand to brand and lot to lot (502, 504). Currently, the amount of latex allergen exposure required to produce sensitization or to elicit reactions in previously sensitized persons is unknown.

Another recognized contributor to latex sensitization and reactions is the powder or cornstarch used as a lubricant for gloves. Levels of extractable protein and allergen in a given glove have been shown to be correlated with the presence of powder. Powdered gloves have higher levels of these proteins than powder-free gloves. Also, investigators have demonstrated that latex proteins adhere to the powder on gloves and that aerosolized latex protein-powder particles can provoke allergic respiratory symptoms if inhaled by a latex-sensitive individuals (506); similar adherence has not been detected with powdered vinyl gloves. In one study, personnel wearing powdered latex gloves had a significantly higher rate of reaction than did workers who wore washed latex gloves, from which the powder had been removed (60% vs 28%); none of these workers had positive skin-test reactions to industrial or commercial cornstarch or powder (497). Although many health care personnel or clinicians may implicate the powder or cornstarch on gloves as the cause of their reactions, documented reactions to cornstarch powder are rare.

Reactions to latex gloves may be localized or systemic and include dermatitis, conjunctivitis, rhinitis, urticaria, angioedema, asthma, and anaphylaxis (507–510). The majority of local reactions associated with latex glove use are not immunologically mediated and result from chemicals (e.g., thiurams, carbamates, mercaptobenzothiazole, phenylenediamine), accelerants or antioxidants added to gloves during manufacturing (495, 500, 511–513). It may be difficult to differentiate irritant reactions from allergic contact dermatitis reactions. Both may be manifested by itching, dryness, erythema, bleeding, or scaling of the hands. Nevertheless, neither of the types of local reactions to latex gloves are good predictors of latex allergy (496, 514); only a subset of health care personnel reporting glove-associated skin irritation will have immunoglobulin E (IgE) antibodies specific for latex (511, 515–517).

In contrast, systemic reactions to natural rubber latex, including urticaria, are mediated by anti-latex IgE antibodies (507, 518, 519) and may result from direct skin contact or from exposure to airborne latex allergen adsorbed to glove powder. Occupational asthma from latex is becoming increasingly recognized (518, 520–522). Asthmatic responses to latex may occur early (<8 hours) or late (>8 hours) following exposure (523–525).

Local reactions (i.e., irritant or allergic contact dermatitis) account for the majority of reported reactions among health care personnel (496, 499). The risk of progression from localized to systemic reactions is unknown.

a. Prevalence and risk factors. In studies of health care personnel, the reported prevalence of IgE-mediated allergy to latex vary considerable ranging from 2.9%–17%. The broad range of prevalence rates reported likely represent differences in the personnel groups studied and the methods used for estimating sensitization or allergy (516, 517, 520, 526, 527). The prevalence detected in some studies also has been biased by enrollment or testing of only symptomatic personnel (497, 501). However, it is estimated that a minority of health care personnel, even if symptomatic, seek medical evaluation or treatment for latex-allergic conditions. Thus, the true prevalence of these reactions among health care personnel is unknown.

The prevalence of sensitization to latex among health care personnel has been shown to vary by job category and by location within a facility (499, 527). In one study of 224 health care personnel, the overall prevalence of skin-prick reactivity to latex was 17%, but ranged from 0% (0/17) among housekeepers/clerical workers to 38% (5/13) among dental residents/assistants (499). In another survey of 512 health care personnel, the prevalence among physicians (6.5% [7/108]) was greater than that among nurses (2.2% [7/325]) or other hospital personnel (1.3% [1/79]). Also, operating room personnel

(6.2% [9/145]) were significantly more likely to be sensitized than were personnel assigned to general wards or laboratories (1.6% [6/367]); operating room nurses had a four fold higher prevalence than did general ward nurses (5.6% vs 1.2%) (527). Measurable levels of latex aeroallergen have been detected in the breathing zones of operating room personnel and may vary as much as 100-fold, depending on the invasiveness of the procedure and frequency of glove changes (528).

Several factors have been linked with latex sensitization among health care personnel, including the presence of other allergic conditions (e.g., asthma, eczema, hay fever) (496, 514, 516, 517, 520, 526, 527), nonwhite race (79, 526), elevated total IgE levels (517), allergy to cosmetic powders or foods (529), years or status (full vs part-time) of employment, and frequency and/or duration of glove use (496, 514, 520, 527). Coexistent allergy to certain fruits (e.g., bananas [(530, 531)], avocados [(532, 533), pears, and chestnuts (534)) also has been described in latex-allergic health care personnel.

Skin irritation, eczematous dermatitis (514, 527) (conditions that may allow passage of latex proteins through the skin), and use of other latex products (e.g., condoms, diaphragms) have not been consistently linked to latex sensitization in health care personnel.

b. Diagnosis/identification. Diagnosis of personnel with latex allergy relies largely on a clinical history of symptoms elicited by exposure to latex products (e.g., balloons, gloves). Clinical symptoms, such as urticaria, may be good predictors of IgE-medicated allergy (514, 517).

A variety of methods have been used to aid in the identification of latex-allergic persons; most are experimental and have not been approved for clinical use. Skin-prick testing (SPT) may be the most sensitive method for diagnosis of IgE-mediated allergy, but no standardized FDA-approved antigen is currently available in the United States for detection of latex-specific IgE antibodies. Moreover, the use of some skin test reagents in highly sensitized persons have been associated with adverse outcomes (535), suggesting that these nonstandardized reagents may not be safe for routine use. In Europe, where a standardized SPTallergen has been developed, SPT has been used successfully.

Currently, only one immunoassay has been FDA approved for detection of latex-specific IgE antibodies in blood. The FDA has recommended that this assay be used as a confirmatory test, rather than screening, for persons in whom latex allergy is suspected, based on clinical history and findings. Levels of detectable antibody appear to be associated with symptoms (497, 517), but, as with other allergens, the correlation between serum concentrations of latex-specific IgE antibodies and symptom severity is unpredictable (497, 514). Clinical screening, in which the worker is questioned about allergy to latex products and risk factors for latex allergy, may help to identify those in whom further diagnostic testing should be considered.

c. Prevention strategies. Avoiding latex products remains the cornerstone of preventing sensitization (primary prevention) and reactions (secondary prevention) to natural rubber latex products. Proposed strategies to reduce the risk of reactions to natural rubber latex have included the use of the following: (a) nonlatex (e.g., vinyl) products alone or in combination (with vinyl or cloth liners) with latex gloves; (b) powder-free latex gloves; (c) powdered latex gloves washed to remove powder; and (d)''low protein'' latex gloves. However, none of these interventions has been prospectively studied in controlled trials to assess its cost-effectiveness or efficacy in preventing sensitization or reactions.

Because latex proteins can be aerosolized when powdered gloves are donned or removed, systemic symptoms caused by latex aeroallergens may not be alleviated by simply avoiding latex products, particularly if co-workers of the affected worker continue to use powdered latex gloves. Although the risk of a worker's exposure is greatest when gloves are donned or removed, allergenic proteins also may settle on environmental surfaces, surgical gowns, or other clothing and become resuspended. The use of powder-free or low protein gloves appears to more effective and less costly than either laminar flow or high-efficiency particulate air-filtered glove-changing stations in reducing latex aeroallergens (528). For personnel with systemic manifestations to latex, workplace restriction or reassignment may be necessary.

I. The Americans With Disabilities Act

The Americans with Disabilities Act (ADA) provides guidelines for hiring and placing employees with disabilities as defined in the Act (536–539). In general, employers must assess applicants for their qualifications to perform the tasks inherent to the job for which the employee is being considered. Applicants may be asked about their ability to perform specific job functions, but may not be asked about the existence, nature, or severity of a disability. Employers must make a ''reasonable accommodation'' to allow an individual to perform the essential functions of a job unless the employer can prove this would create undue hardship because of significant difficulty or expense.

The provisions of the ADA need to be incorporated into infection control policies for health care personnel. For example, applicants with a communicable disease spread by aerosol could justifiably be denied employment (until they are no longer infectious) because they could pose a direct threat to others. On the other hand, applicants who are immunocompromised may not necessarily be excluded because of an increased risk of acquiring an infection in the hospital if the employer can make reasonable accommodations that prevent exposure. Health care personnel who are known to be immunocompromised need to be referred to personnel health professionals who can individually counsel the employees on their risk for infection. Upon the request of the immunocompromised health care personnel, employers should offer, but not compel, a work setting in which health care personnel would have the lowest possible risk for occupational exposure to infectious agents. Evaluation of individual situations need also to include consideration of the provisions of other applicable federal, state, and local laws.

Part II. Recommendations for Prevention of Infections in Health Care Personnel

A. Introduction

In this document, the term health care personnel refers to all the paid and unpaid persons working in health care settings who have the potential for exposure to infectious materials including body substances, contaminated medical supplies and equipment, contaminated environmental surfaces, or contaminated air. These personnel may include, but are not limited to, physicians, nurses, technicians, nursing assistants, laboratory personnel, mortuary personnel, emergency medical service personnel, dental personnel, students and trainees, contractual staff not employed by the health care facility, and persons not directly involved in patient care (e.g., volunteer, dietary, housekeeping, maintenance, and clerical personnel) but potentially exposed to infectious agents.

As in previous CDC guidelines, each recommendation is categorized on the basis of existing scientific data, theoretical rationale, applicability, and economic impact. The system for categorizing recommendations is as follows:

Category IA. Strongly recommended for all hospitals and strongly supported by well-designed experimental or epidemiologic studies.

Category IB. Strongly recommended for all hospitals and reviewed as effective by experts in the field and a consensus of Hospital Infection Control Practices Advisory Committee members based on strong rationale and suggestive evidence, even though definitive scientific studies have not been done.

Category II. Suggested for implementation in many hospitals. Recommendations may be supported by suggestive clinical or epidemiologic studies, a strong theoretical rationale, or definitive studies applicable to some, but not all, hospitals.

No Recommendation, Unresolved Issue. Practices for which insufficient evidence or consensus regarding efficacy exists.

B. Elements of a Personnel Health Service for Infection Control

1. Coordinated Planning and Administration

a. Coordinate policy-making and planning among the hospital administration, personnel health service, infection control personnel, clinical services and various other hospital departments, and relevant external agencies. Include paid and nonpaid personnel (e.g., volunteers, trainees, physicians, out-of-hospital and contractual personnel, and emergency responders) in the plan. *Category IB*

b. Establish an active system and develop a written policy for notifying infection control personnel of (1) infections in personnel (including volunteers, trainees, contractual personnel, and out-of-hospital personnel) that require work restrictions or exclusion from work; (2) clearance for work after an infectious illness that required work restrictions or exclusion; (3) other work-related infections and exposures; and (4) when appropriate, results of epidemiologic investigations. *Category IB*

c. Develop protocols to assure coordination between the personnel health program and the infection control program of the institution. *Category IB*

2. Placement evaluation

a. Before personnel begin duty or are given a new work assignment, obtain their health inventories. Include in the inventories the following: (1) immunization status or history of vaccine preventable diseases (e.g., chickenpox, measles, mumps, rubella, hepatitis B); (2) history of any conditions that may predispose personnel to acquiring or transmitting infectious diseases (e.g., immunosuppressive condition or therapy, tuberculosis, dermatologic conditions, chronic draining infections or open wounds, or chronic infections). *Category IB*

b. For infection control, perform directed physical and laboratory examinations on personnel, as may be determined from the results of the health inventory. Include examinations to detect conditions that might increase the likelihood of transmitting disease to patients, or unusual susceptibility to infection, and to serve as a baseline for determining whether any future problems are work related. *Category IB*

c. Conduct personnel health assessments other than placement evaluations on an as-needed basis for example, as required to evaluate work-related illness or exposures to infectious diseases. *Category IB*

d. Do not perform routine cultures on personnel (e.g., cultures of the nose, throat, or stool) as part of the placement evaluation (540). *Category IB*

e. Conduct routine screening for tuberculosis by using the intradermal (Mantoux), intermediate strength (5 TU) PPD test on personnel who have potential for exposure to TB. *Category II*

f. Conduct routine serologic screening for some vaccine-preventable diseases, such as hepatitis B, measles, mumps, rubella, or varicella, if deemed to be cost-effective to the hospital and beneficial to the health care personnel. *Category II*

3. Personnel Health and Safety Education

a. Include the infection control aspects of personnel health and the proper use of the personnel health service in the initial job orientation and ongoing in-service education of personnel. *Category IB*

(1) Ensure that the following topics are included in the initial training on infection control: (a) handwashing; (b) modes of transmission of infection and importance of complying with standard and isolation precautions; (c) importance of reporting certain illnesses or conditions (whether work related or acquired outside the hospital), such as generalized rash or skin lesions that are vesicular, pustular, or weeping; jaundice; illnesses that do not resolve within a designated period of time (e.g., a cough that persists for >2 weeks, gastrointestinal illness, or febrile illness with fever of >103 °F lasting more than 2 days) and hospitalizations resulting from febrile or other contagious diseases; (d) tuberculosis control; (e) importance of complying with Standard Precautions and reporting exposure to blood and body fluids to prevent transmission of bloodborne pathogens; (g) importance of cooperating with infection control personnel during outbreak investigations; and (h) importance of personnel screening and immunization programs. *Category IB*

(2) Ensure that all personnel know that if they have medical conditions (e.g., immunosuppression) or receive medical treatment that render them more susceptible to or more likely to transmit infections, they can follow recommendations to greatly reduce their risk for transmitting or acquiring infections, e.g., request for work reassignment. *Category IB*

b. Make specific written policies and procedures for control of infections in health care personnel readily available. *Category IB*

c. Provide personnel, annually, and whenever the need arises, with in-service training and education on infection control that are appropriate and specific for their work assignments so that personnel can maintain accurate and up-to-date knowledge about the essential elements of infection control. *Category IB*

d. Provide educational information appropriate, in content and vocabulary, to the educational level, literacy, and language of the employee. *Category IB*

4. Job-Related Illnesses and Exposures

a. Maintain a record on health care personnel that includes information obtained during the medical evaluation, immunization records, results of tests obtained in any screening or control programs, and reports of work-related illnesses or exposures in accordance with state and federal regulatory requirements. *Category IB*

b. Establish a readily available mechanism for personnel to obtain advice about illnesses they may acquire from or transmit to patients. *Category IB*

c. Evaluate job-related and community-acquired illnesses or important exposures and postexposure prophylaxis, when indicated. *Category IB*

d. Develop written protocols for handling job-related and community-acquired infectious diseases or important exposures. Record the occurrences of job-related infectious diseases or important exposures in the person's record and, when applicable,

notify appropriate infection control personnel and members of the personnel health service. *Category IB*

5. Record-Keeping, Data Management, and Confidentiality

a. Establish and keep an updated record for all personnel and maintain the confidentiality of their records while ensuring that they receive appropriate therapeutic or prophylactic management for illnesses caused by or following exposures to transmissible infections. Ensure that individual records for volunteers, trainees, contractual personnel, and personnel who provide care outside of hospitals are similarly kept and maintained. *Category IB*

b. Ensure that when data on personnel health are made public, the individual's confidentiality is maintained, for example, by releasing only aggregate numbers. *Category IB*

c. Maintain a personnel data base, preferably computerized, that allows tracking of personnel immunizations, screening tests, and assessment of trends of infections and diseases in personnel. Copies of these records are to be available to the individual. *Category IB*

d. Periodically review and assess data gathered on personnel health (e.g., rates of PPD-test conversion) to determine the need for action. *Category IB*

e. Ensure that all federal, state, local, and community standards on medical record keeping and confidentiality are met (23, 24). *Category IB*

C. Protection of Personnel and Other Patients From Patients With Infections

Apply precautions described in the current Guideline for Isolation Precautions in Hospitals (1) and other guidelines (377). *Category IB*

D. Immunization of Health Care Personnel, General Recommendations

1. Ensure that persons administering immunizing agents are: (a) familiar with the general ACIP recommendations and recommendations on immunizing adults; (b) well informed about indications, storage, dosage, preparation, side effects, and contraindications for each of the vaccines, toxoids, and immune globulins used (6, 7, 22); and (c) kept updated on professional organization recommendations regarding vaccination of health care personnel (Tables 1 and 2). *Category IB*

2. Ensure that immunization product information is available at all times and that a pertinent health history, especially a history of allergy and potential vaccine contraindications, is obtained from each person before an agent is given (Table 2). *Category IB*

3. Ensure that persons administering immunizing agents are familiar with state and local regulations regarding vaccinations for health care personnel. *Category IB*

4. Formulate a written comprehensive policy on immunizing health care personnel. *Category IB*

5. Develop a data base of employee specific information on history of vaccine preventable diseases and status of vaccine administration. *Category IB*

6. Develop a list of needed immunizations for each employee during screening and an individual plan to provide the necessary vaccines. *Category IB*

7. In the absence of a known occupational exposure, provide personnel with on-site service or refer personnel to their own health care providers for routine non-occupation-related immunizations against diphtheria, pneumococcal disease, hepatitis A, or tetanus (Table 1). *Category IB*

8. Provide vaccine to personnel who may have occupational exposure to uncommon diseases such as plague, typhus, or yellow fever, or refer them to their own health care providers. *Category IB*

E. Prophylaxis and Follow-Up After Exposure, General Recommendations

1. Ensure that when personnel are offered necessary prophylactic treatment with drugs, vaccines, or immune globulins, they are informed of (a) options for prophylaxis; (b) the risk (if known) of infection when treatment is not accepted; (c) the degree of protection provided by the therapy; and (d) the potential side effects of the therapy. *Category IB*

2. Ensure that when personnel are exposed to particular infectious agents, they are informed of (a) the recommended follow-up based on current knowledge about the epidemiology of the infection; (b) the risk (if known) of transmitting the infection to patients, other personnel, or other contacts; and (c) the methods of preventing transmission of the infection to other persons. *Category IB*

F. Personnel Restriction Because of Infectious Illnesses or Special Conditions, General Recommendations

1. Develop well-defined policies concerning contact of personnel with patients when personnel have potentially transmissible conditions. These policies should govern (a) personnel responsibility in using the health service and reporting illness; (b) removal of personnel from contact with patients; and (c) clearance for work after an infectious disease that required work restriction. *Category IB*

2. Identify the persons with authority to relieve personnel of duties. *Category IB*

3. Develop work-exclusion policies that encourage personnel to report their illnesses or exposures and that do not penalize them with loss of wages, benefits, or job status. *Category IB*

4. Educate and encourage personnel who have signs and symptoms of a transmissible infectious disease to report their condition promptly to their supervisor and occupational health. *Category IB*

5. Provide appropriate education for personnel on the importance of good hygienic practices, especially handwashing and covering the nose and mouth when coughing and sneezing. *Category IB*

G. Prevention of Nosocomial Transmission of Selected Infections

1. Bloodborne Pathogens, General Recommendation

a. Ensure that health care personnel are familiar with precautions to prevent occupational transmission of bloodborne pathogens (1, 4, 26, 27, 35). *Category IA*

b. Follow state and federal guidelines and strategies for determining the need for work restrictions for health care personnel infected with bloodborne pathogens (43). *Category IB*

a. Hepatitis B. (1) Administer hepatitis B vaccine to personnel who perform tasks involving routine and inadvertent (e.g., as with housekeepers) contact with blood, other body fluids (including blood-contaminated fluids), and sharp medical instruments or other sharp objects (7, 8, 36). *Category IA*

(2) Before vaccinating personnel, do not routinely perform serologic screening for hepatitis B vaccine unless the health care organization considers screening cost-effective or the potential vaccinee requests it (7). *Category IA*

(3) Conduct post vaccination screening for immunity to hepatitis B within 1 to 2 months after the administration of the third vaccine dose to personnel who perform tasks involving contact with blood, other body fluids (including blood-contaminated fluids), and sharp medical instruments or other sharp objects. *Category IA*

(4) Revaccinate persons not found to have an antibody response after the initial hepatitis B vaccine series with a second three dose vaccine series. If persons still do not respond after

revaccination, refer them for evaluation for lack of response, (e.g.,possible chronic HBV infection) (7) (Tables 1 and 4). *Category IB*

(5) Test staff in chronic dialysis centers who do not respond to the hepatitis B vaccine for hepatitis B surface antigen (HBsAg) and antibody to hepatitis B surface antigen (anti-HBs) semi-annually (541). *Category IA*

(6) Use both passive immunization with hepatitis B immune globulin and active immunization with hepatitis B vaccine for postexposure prophylaxis in susceptible personnel who have had a needlestick, percutaneous, or mucous membrane exposure to blood known or suspected to be at high risk for being HBsAg positive (Table 6). *Category IA*

(7) Follow current recommendations for postexposure prophylaxis following percutaneous or mucous membrane exposure to blood and body fluids that is known or suspected to be at high risk for being HBsAg-positive (Table 4) (36). *Category IA*

b. Hepatitis C. (1) Do not administer immune globulin (IG) to personnel who have exposure to blood or body fluids positive for antibody to hepatitis C virus (33, 69). *Category IB*

(2) Consider implementing policies for postexposure follow-up for health care personnel who have had a percutaneous or mucosal exposure to blood containing antibody to hepatitis C virus at baseline and 6 months (69). *Category IB*

c. Human Immunodeficiency Virus (HIV). Follow current recommendations for postexposure prophylaxis following percutaneous or mucocutaneous exposure to suspected or known HIV-infected blood or body fluids containing blood (29, 76). *Category IB*

2. Conjunctivitis

Restrict personnel with epidemic keratoconjunctivitis caused by adenovirus or purulent conjunctivitis caused by other microorganisms from patient care for the duration of symptoms. If symptoms persist >5–7 days, refer personnel to an ophthalmologist for evaluation of continued infectiousness. *Category IB*

3. Cytomegalovirus (CMV)

a. Do not restrict personnel from work who contract illnesses suspected or proven to be due to CMV (109). *Category IB*

b. Educate all patient-care personnel about careful handwashing and exercising care to prevent their body fluids from contacting other persons to reduce their risk of transmitting infections such as CMV to patients or other personnel (89, 123). *Category IA*

c. Ensure that pregnant personnel are aware of the risks associated with CMV infection and infection control procedures to prevent transmission when working with high-risk patient groups (Table 6). *Category IA*

4. Diphtheria

a. Encourage vaccination with tetanus and diphtheria toxoid (Td) every 10 years for health care personnel (7, 17) (Table 1). *Category IB*

b. Obtain nasopharyngeal cultures from exposed personnel and monitor for signs and symptoms of diphtheria for 7 days (156). *Category IB*

c. Administer antimicrobial prophylaxis to personnel who have contact with respiratory droplets or cutaneous lesions of patients infected with diphtheria. Also administer a dose of Td to previously immunized personnel who have not been vaccinated within the previous 5 years (17, 156) (Table 1). *Category IB*

d. Repeat nasopharyngeal cultures of personnel found to have positive cultures at ≥2 weeks following completion of antimicrobial therapy. Repeat antimicrobial therapy if personnel remain culture positive (156). *Category IB*

e. Exclude exposed personnel and those identified as asymptomatic carriers from duty until antimicrobial therapy is completed *and* two nasopharyngeal cultures obtained ≥24 hours apart are negative (156) (Table 3). *Category IB*

5. Gastroenteritis

a. Vaccinate and provide booster doses of vaccine, following published guidelines, to microbiology laboratory personnel who work with *Salmonella typhi* on a regular basis (144, 155). *Category II*

b. Pending their evaluation, exclude personnel with acute gastrointestinal illnesses (vomiting or diarrhea, with or without other symptoms such as nausea, fever, or abdominal pain) that may be accompanied by other symptoms (such as fever, abdominal cramps, or bloody stools), from contact with patients or food-handling (1, 163) (Table 3). *Category IB*

c. Consult local and state health authorities regarding regulations for the exclusion of patient-care personnel or food-handlers with enteric infections from contact with patients or food-handling, respectively. *Category IB*

d. Determine the etiology of gastrointestinal illness among personnel who care for patients at high risk of severe disease. *Category IB*

e. Allow personnel infected with enteric pathogens to return to work after their symptoms resolve if local regulations do not require exclusion from duty for designated pathogens for specified time periods or until negative cultures are available. *Category II*

f. Ensure that personnel, including those who are immunocompromised, returning to work after a gastrointestinal illness practice good hygienic practices, especially handwashing, to reduce or eliminate the risk of transmission of the infecting agents (160, 542). *Category IB*

g. Do not routinely perform follow-up cultures or examinations of stool for enteric pathogens other than *Salmonella* to determine when the stool is free of the infecting organism, unless local regulations require such procedures. *Category IB*

h. Do not perform routine stool cultures on asymptomatic health care personnel unless required by state and local regulations. *Category IB*

6. Hepatitis A (HAV)

a. Do not routinely administer inactivated hepatitis A vaccine to health care personnel. Susceptible personnel working in areas where hepatitis A is highly endemic should be vaccinated to prevent acquisition of community acquired infection (7, 196). *Category IB*

b. Do not routinely administer immune globulin (IG) as prophylaxis for personnel providing care or who are exposed to a patient with hepatitis A (196). *Category IB*

c. Administer IG (0.02 ml/kg) to personnel who have had oral exposure to fecal excretions from a person acutely infected with hepatitis A virus (196) (Table 1). *Category IA*

d. In documented outbreaks involving transmission of HAV from patient to patient or from patient to health care worker, use of IG in persons with close contact with infected persons may be indicated. Contact the local health department regarding control measures (Table 1). *Category IB*

e. Exclude personnel who have acute hepatitis A from work until 1 week after the onset of jaundice (Table 3). *Category IA*

7. Herpes Simplex Virus

a. Exclude personnel with primary or recurrent orofacial herpes simplex infections from the care of high-risk patients, including newborns, intensive care unit patients, patients with severe burns or eczema, or severely immunocompromised patients, until the lesions are crusted (201, 210) (Table 3). *Category IB*

b. Exclude personnel with herpes simplex infections of the fingers or hands (herpetic whitlow) from contact

with patients until their lesions are healed (206). *Category IB*

8. Measles

a. Ensure that all personnel have documented immunity to measles.

(1) Consider administering measles vaccine* to persons born in 1957 or later unless they have evidence of measles immunity. *Category IA*

(2) Administer measles vaccine* to personnel born before 1957 if they do not have evidence of measles immunity and are at risk of occupational exposure to measles (6, 213, 225, 226) (Table 1). *Category IA*

(3) Do not routinely perform serologic screening for measles before administering measles vaccine * to personnel unless the health care employer considers screening cost-effective or the potential vaccinee requests it (6, 9, 227–229, 543). *Category IA*

(4) Administer postexposure measles vaccine* to measles-susceptible personnel who have contact with persons with measles, within 72 hours after the exposure. During the period 5 days after the first exposure until 21 days after the last exposure, exclude exposed, vaccinated personnel from duty (6) (Tables 1–3). *Category IA*

b. Exclude exposed unvaccinated personnel from duty from the 5th day after the first exposure until the 21st day after the last exposure to measles, regardless of whether they receive postexposure vaccine, if they do not have documented immunity to measles (9, 229) (Table 3). *Category IB*

c. Exclude personnel who develop measles from patient contact for 4 days after rash develops or for the duration of their acute illness, whichever is longer (9, 229) (Table 3). *Category IB*

9. Meningococcal Disease

a. Do not administer routinely meningococcal vaccine to health care personnel (13). *Category IB*

b. Consider vaccination of laboratory personnel who are routinely exposed to *Neisseria meninigitidis* in solutions that may be aerosolized (13) (Table 1). *Category IB*

c. Immediately offer antimicrobial prophylaxis to personnel who have had any of the following types of contact with a patient with meningococcal disease prior to administration of antibiotics: (a) Intensive, unprotected (i.e., without the use of proper precautions), close, face-to-face contact with a patient with meningococcal disease; (b) contact with the patient's oropharyngeal secretions; or (c) a needlestick from a patient with meningococcal disease (13) (Table 1). *Category IB*

d. Do not routinely give quadrivalent A,C,Y, W-135 meningococcal vaccines for postexposure prophylaxis (13) (Table 1). *Category II*

e. Administer meningococcal vaccine to personnel (and other persons likely to have contact with infected persons) to control Serogroup C outbreaks following consultation with public health authorities (13). *Category IB*

f. Consider preexposure vaccination of personnel who routinely handle soluble preparations in *N. meningitidis* (13). *Category II*

10. Mumps

a. Administer mumps vaccine* to all personnel without documented evidence of mumps immunity unless otherwise contraindicated (7, 250) (Table 1). *Category IA*

b. Before vaccinating personnel with mumps vaccine,* do not routinely perform serologic screening for mumps unless the health care employer considers screening cost-effective or it is requested by the potential vaccinee (10). *Category IB*

c. Exclude susceptible personnel who are exposed to mumps from duty from the 12th day after the first exposure through the 26th day after the last exposure or if symptoms develop, until 9 days after the onset of parotitis (7, 544) (Table 3). *Category IB*

11. Parvovirus

a. Ensure that pregnant personnel are aware of the risks associated with parvovirus infection and of infection control procedures to prevent transmission when working with high-risk patient groups (264, 265) (Table 6). *Category IB*

b. Do not routinely exclude pregnant personnel from caring for patients with parvovirus B19. *Category IB*

12. Pertussis

a. Do not administer whole-cell pertussis vaccine to personnel (Table 1). *Category IB*

b. *No Recommendation* for routine administration of an acellular pertussis vaccine to health care personnel. *Unresolved Issue*

c. Immediately offer antimicrobial prophylaxis against pertussis to personnel who have had unprotected (i.e., without the use of proper precautions), intensive (i.e., close, face-to-face) contact with a patient who has a clinical syndrome highly suggestive of pertussis and whose cultures are pending; discontinue prophylaxis if cultures or other tests are negative for pertussis and the clinical course is suggestive of an alternate diagnosis (277, 278) (Table 1). *Category II*

d. Exclude personnel who develop symptoms (e.g., unexplained rhinitis or acute cough) following known exposure to pertussis from patient care until 5 days after the start of appropriate therapy (Table 3). *Category IB*

13. Poliomyelitis

a. Determine whether the following personnel have completed a primary vaccination series: (1) Persons who may have contact with patients or the secretions of patients who may be excreting wild polioviruses; or (2) laboratory personnel who handle specimens that might contain wild polioviruses or who do cultures to amplify virus (19) (Table 1). *Category IA*

b. For personnel above, including pregnant personnel or personnel with an immunodeficiency, who have no proof of having completed a primary series of polio immunization, administer the enhanced inactivated poliovirus vaccine (IPV) rather than oral polio vaccine (OPV) for completion of the series (19) (Table 1). *Category IB*

c. When a case of wild-type poliomyelitis infection is detected or an outbreak of poliomyelitis occurs, contact the CDC through the state health department. *Category IB*

14. Rabies

a. Provide pre-exposure vaccination to personnel who work with rabies virus or infected animals in rabies diagnostic or research activities with rabies virus (3, 20) (Table 1). *Category IA*

b. After consultation with public health authorities, give a full course of anti-rabies treatment to personnel who either have been bitten by a human with rabies or have scratches, abrasions, open wounds, or mucous membranes contaminated with saliva or other potentially infective material from a human with rabies. In those previously vaccinated individuals, postexposure therapy is abbreviated to only include a single dose of vaccine on days 0 and 3 (285–287) (Table 1). *Category IB*

15. Rubella

a. Vaccinate all personnel without documented immunity to rubella with

* (Measles-mumps-rubella [MMR] trivalent vaccine is the vaccine of choice. If the recipient is known to be immune to one or more of the components, monovalent or bivalent vaccines may be used.)

* (Measles-mumps-rubella [MMR] trivalent vaccine is the vaccine of choice. If the recipient is known to be immune to one or more of the components, monovalent or bivalent vaccines may be used.)

rubella vaccine.* (7, 300) (Table 1) *Category IA*

b. Consult local and state health departments regarding regulations for rubella immunity in health care personnel. *Category IA*

c. Do not perform serologic screening for rubella before vaccinating personnel with rubella vaccine,* unless the health care employer considers it cost-effective or the potential vaccinee requests it (229). *Category IB*

d. Do not administer rubella vaccine* to susceptible personnel who are pregnant or might become pregnant within 3 months of vaccination (7) (Table 1). *Category IA*

e. Administer rubella vaccine* in the postpartum period to female personnel not known to be immune. *Category IA*

f. Exclude personnel who are exposed to rubella from duty from the 7th day after the first exposure through the 21st day after the last exposure (Table 3). *Category IB*

g. Exclude personnel who develop rubella from duty until 7 days after the beginning of the rash (Table 3). *Category IB*

16. Scabies and Pediculosis

a. Evaluate exposed personnel for signs and symptoms of mite infestation and provide appropriate therapy for confirmed or suspected scabies (302). *Category IA*

b. Evaluate exposed personnel for louse infestation and provide appropriate therapy for confirmed pediculosis (325). *Category IA*

c. Do not routinely provide prophylactic scabicide treatment of personnel who have had contact with patients or other persons with scabies (301, 302, 308, 321, 329) (Table 1). *Category II*

d. Do not routinely provide prophylactic pediculicide treatment of personnel who have had contact with patients or other persons with pediculosis. *Category II*

e. Exclude personnel with either confirmed or suspected scabies or lice infestation from contact with patients until after they receive appropriate initial treatment or are found not to have scabies or pediculosis, respectively (302) (Table 3). Exclude personnel with confirmed scabies from the care of immunocompromised patients until after the second treatment, unless they wear gowns and gloves for patient contact. *Category IB*

17. Staphylococcal Disease or Carriage

a. Obtain appropriate cultures and exclude personnel from patient care or food handling if they have a draining lesion suspected to be due to *Staphylococcus aureus*, until the infections have been ruled out or personnel have received adequate therapy and their infections have resolved (Table 3). *Category IB*

b. Do not routinely exclude personnel with suspected or confirmed carriage of *S. aureus* (on nose, hand, or other body site), from patient care or food-handling unless it is shown epidemiologically that the person is responsible for disseminating the organism in the health care setting (Table 3). *Category IB*

18. Group A Streptococcal Disease or Carriage

a. Obtain appropriate cultures, and exclude personnel from patient care or food handling if they have draining lesions that are suspected to be due to Streptococcus, until streptococcal infection has been ruled out or the worker has received adequate therapy for 24 hours (364–366, 369) (Table 3). *Category IB*

b. Do not routinely exclude personnel with suspected or confirmed carriage of group A *Streptococcus* from patient care or foodhandling unless it is shown epidemiologically that the person is responsible for disseminating the organism in the health care setting (Table 3). *Category IB*

19. Tuberculosis

a. General Recommendations. (1) Educate all health care personnel regarding the recognition, transmission, and prevention of TB. *Category IB*

(2) Follow current recommendations outlined in the Guidelines for Preventing the Transmission of Mycobacterium tuberculosis in Health-Care Facilities, 1994 (377). *Category IB*

b. TB Screening Program. (1) Include all health care personnel who have potential for exposure to *M. tuberculosis* in a purified protein derivative (PPD) skin-test program (377). *Category IA*

(2) Maintain confidentiality regarding the medical condition of personnel. *Category IA*

(3) Administer PPD tests by using the intracutaneous (Mantoux) method of administration of 5 tuberculin units (0.1 ml) of purified protein derivative (377, 397). *Category IB*

(4) Do not use the Tine or other tests to administer PPD (397). *Category IB*

(5) Test personnel known to have conditions that cause severe suppression of cell-mediated immunity (such as HIV-infected persons with lowered CD4+ counts and organ-transplant recipients receiving immunosuppressive therapy) for cutaneous anergy at the time of PPD testing (377). *Category IB*

(6) Ensure that the administration, reading, and interpretation of PPD tests are performed by specified trained personnel. *Category IA*

c. Baseline PPD. (1) Perform baseline PPD tests on health care personnel who are new to a facility and who have potential for exposure to *M. tuberculosis*. Include those with a history of BCG vaccination (377). *Category IB*

(2) Perform two-step, baseline PPD tests on newly employed health care personnel who are negative on initial PPD testing and have not had a documented negative PPD-test result during the preceding 12 months, unless the institution has determined that two-step testing is not warranted in their facility (377). *Category II*

(3) Interpret baseline PPD-test results as outlined in the Guidelines for Preventing the Transmission of Mycobacterium tuberculosis in Health-Care Facilities, 1994 (377). *Category IB*

d. Follow-up (Repeat) PPD. (1) Perform periodic follow-up PPD tests on all health care personnel (with negative baseline PPD test result) who have the potential for exposure to *M. tuberculosis* (377). *Category IA*

(2) Base the frequency of repeat PPD testing on the hospital's risk assessment, as described in the Guidelines for Preventing the Transmission of Mycobacterium tuberculosis in Health-Care Facilities, 1994 and as provided by federal, state, and local regulations (377). *Category IB*

(3) Exempt from follow-up-PPD tests: personnel with documented history of positive baseline PPD test result or adequate treatment for tuberculosis (377). *Category IB*

(4) Interpret follow-up-PPD test results as outlined in the Guidelines for Preventing the Transmission of Mycobacterium tuberculosis in Health-Care Facilities, 1994 (377). *Category IB*

(5) Management of PPD-positive personnel.

(a) Promptly evaluate personnel with positive PPD test results for active disease and obtain an adequate history on TB exposure to help determine whether the infection is occupational or community acquired (377). *Category IB*

(b) Perform chest x-ray examinations on personnel with a positive PPD-test result as part of the evaluation for active TB (377). *Category IB*

(c) Do not repeat chest x-rays unless symptoms suggestive of TB develop, if

* (Measles-mumps-rubella [MMR] trivalent vaccine is the vaccine of choice. If the recipient is known to be immune to one or more of the components, monovalent or bivalent vaccines may be used.)

the initial chest x-ray examination is negative (377). *Category IB*

(d) Periodically remind all personnel, especially those with positive PPD-test results, about the symptoms of TB and the need for prompt evaluation of any pulmonary symptoms suggestive of TB (377). *Category IB*

(e) Do not require routine chest x-rays for asymptomatic, PPD-negative workers (377). *Category IB*

e. Preventive therapy. 1) Offer preventive therapy to the following personnel, regardless of age, who convert their PPD test (a) recent converters; (b) close contacts of persons with active TB; (c) those with medical conditions that increase their risk for active TB; (d) those with HIV infection; or (e) injecting-drug users (377, 397). *Category IB*

(2) Offer preventive therapy to personnel with positive PPD reactions who do not have the above risk factors, if they are <35 years of age (397). *Category IA*

(3) Provide preventive therapy to personnel through the occupational health service or refer them to the health department or other health care provider, as appropriate. *Category IB*

f. Postexposure management of personnel. 1) As soon as possible after an exposure to TB (i.e., exposure to a person with pulmonary or laryngeal TB for whom proper isolation precautions were not implemented), conduct PPD testing on personnel who are known to have negative PPD-skin test results. When the result of this PPD test is negative, administer a second test 12 weeks after the exposure (377). *Category IB*

(2) Do not perform PPD tests or chest x-rays on personnel with prior positive PPD-test results unless they have symptoms suggestive of active TB (377). *Category IB*

(3) Consider retesting immunocompromised health care personnel who are potentially exposed to M. tuberculosis at least every 6 months (377). *Category II*

g. Workplace restrictions. (1) Exclude personnel with infectious pulmonary or laryngeal TB from the workplace until the facility has documentation from their health care provider that they are receiving adequate therapy, their coughs have resolved, and that there have been three consecutive sputum smears collected on different days negative for acid-fast bacilli (AFB). After personnel return to work, obtain periodic documentation from their health care provider that effective drug therapy has been maintained for the recommended time period and that sputum smears remain AFB negative (377) (Table 3). *Category IB*

(2) Promptly evaluate for infectiousness, those personnel with active TB who discontinue treatment before they are cured. Exclude from duty those who are found to remain infectious until (a) treatment is resumed; (b) an adequate response to therapy is documented; and (c) sputum smears are AFB negative (377). *Category IB*

(3) Consider directly observed therapy for personnel with active TB who have not been compliant with drug regimens. *Category IB*

(4) Do not exclude personnel from the workplace who have TB only at sites other than the lung and/or larynx. *Category IB*

(5) Do not restrict personnel from their usual work activities if they are receiving preventive therapy because of positive PPD tests (377). *Category IB*

(6) Do not exclude personnel from the workplace who have positive PPD-test results and cannot take or do not accept or complete a full course of preventive therapy. Instruct them to seek prompt evaluation if symptoms suggestive of TB develop (377). *Category IB*

h. Immunocompromised personnel. (1) Refer personnel who are known to be immunocompromised to personnel health professionals who can individually counsel them regarding their risk for TB (377). *Category II*

(2) Upon the request of immunocompromised personnel, offer, but do not compel, reasonable accommodations for work settings in which they would have the lowest possible risk for occupational exposure to *M. tuberculosis.* Consider the provisions of the Americans With Disabilities Act of 1990 and other federal, state and local regulations in evaluating these situations (377). *Category II*

i. BCG vaccination. 1) In settings associated with high risk for *M. tuberculosis* transmission:

(a) Consider BCG vaccination of personnel on an individual basis, and only in settings where 1) a high proportion of isolates of *M. tuberculosis* are resistant to isoniazid and rifampin; (2) there is a strong likelihood of transmission and infection with such drug-resistant organisms; and (3) comprehensive infection control precautions have been implemented and have failed to halt nosocomial transmission of TB (401). Consult with the local and state health departments in making this determination. *Category II*

(b) Do not require BCG vaccination for employment or for assignment of personnel in specific work areas (401). *Category II*

(2) Counsel health care personnel who are being considered to receive BCG vaccination about the risks and benefits of both BCG vaccination and preventive therapy, including (a) the variable data on the efficacy of BCG vaccination; (b) the potentially serious complications of BCG vaccine in immunocompromised individuals, such as those with HIV infection; (c) the lack of information on chemoprophylaxis for multi-drug resistant TB infections; (d) the risks of drug toxicity with multi-drug prophylactic regimens; and (e) the fact that BCG vaccination interferes with the diagnosis of newly acquired TB infection (401). *Category IB*

(3) Do not administer BCG vaccine to personnel in settings associated with a low risk for *M. tuberculosis* transmission. *Category IB*

(4) Do not administer BCG vaccine to pregnant or immunocompromised persons with negative baseline PPD test results. *Category II*

20. Vaccinia

a. Ensure that smallpox vaccination is current to within 10 years for personnel who directly handle cultures of or animals contaminated or infected with vaccinia, recombinant vaccinia viruses, or other orthopox-viruses (e.g., monkeypox, cowpox) that infect humans (7, 16) (Table 1). *Category IB*

b. Consider administering vaccinia vaccine to personnel who provide clinical care to recipients of recombinant vaccinia virus vaccines (7, 16) (Table 1). *Category II*

c. Do not administer vaccinia vaccine to personnel with immunosuppression or eczema, or who are pregnant (Tables 1 and 2). *Category IB*

d. Do not exclude from duty, personnel who receive the vaccine, if they keep the vaccination site covered and they follow handwashing practices (16). *Category IB*

21. Varicella

a. Administer varicella vaccine to susceptible personnel, especially those that will have contact with persons at high risk for serious complications (7, 11) (Table 1). *Category IA*

b. Before vaccinating personnel with varicella vaccine, do not perform serologic screening for varicella of persons with negative or uncertain history of varicella, unless the institution considers it cost-effective (7). *Category IB*

c. Do not routinely perform post vaccination testing of personnel for antibodies to varicella (133). *Category IB*

d. *No Recommendation* for administering postexposure varicella vaccination for the protection of exposed, susceptible personnel (7). *Unresolved Issue*

e. Develop guidelines for managing health care personnel who receive varicella vaccine, e.g., consider precautions for personnel who develop a rash following their receipt of varicella vaccine and for other health care personnel who receive varicella vaccine and will have contact with susceptible persons at high risk for serious complications from varicella. *Category IB*

f. Develop written guidelines for postexposure management of vaccinated or susceptible personnel who are exposed to wild-type varicella (7). *Category IB*

g. Exclude personnel from work who have onset of varicella or zoster at least until all lesions have dried and crusted (1) (Table 3). *Category IB*

h. Exclude personnel from duty, following exposure to varicella or zoster, who are not known to be immune to varicella (by history or serology), beginning on the 10th day after the first exposure until the 21st day after the last exposure (7) (Table 3). *Category IB*

i. Perform serologic screening for immunity to varicella on exposed personnel who have not had varicella or are unvaccinated against varicella (7, 16). *Category IB*

j. Consider performing serologic screening for immunity to varicella on exposed, vaccinated personnel whose antibody status is not known. If the test is negative, retest 5–6 days following exposure for anamnestic response. *Category IB*

k. Consider excluding vaccinated personnel from work, beginning on the 10th day after the first exposure through the 21st day after the last exposure, if they do not have detectable antibodies to varicella, or screen daily for symptoms of varicella (7) (Table 3). *Category IB*

l. Do not routinely give varicella-zoster immune globulin (VZIG) to exposed personnel unless immunosuppressed, HIV infected, or pregnant. If VZIG is given, exclude personnel from duty from the 10th day after the first exposure through the twenty-eighth day after the last exposure (7, 16) (Tables 1 and 3). *Category IB*

22. Viral Respiratory Infections

a. Administer influenza vaccine annually to all personnel, including pregnant women, before the influenza season, unless otherwise contraindicated (7, 15) (Table 1). *Category IB*

b. Consider the use of antiviral postexposure prophylaxis for unvaccinated health care personnel during institutional or community outbreaks of influenza for the duration of influenza activity, and vaccination of personnel who did not receive vaccine prior to influenza infections in the community in conjunction with antiviral postexposure prophylaxis for 2 weeks following vaccination (1, 449) (Table 1). *Category IB*

c. Consider excluding personnel with acute febrile respiratory infections, or with laboratory evidence of epidemiologically significant viruses from the care of high-risk patients (e.g., neonates, young infants, patients with chronic obstructive lung disease, and immunocompromised patients) during community outbreaks of influenza or RSV infections (1) (Table 3). *Category IB*

H. Special Issues

1. Pregnancy

a. Counsel pregnant women and women of childbearing age regarding the risk of transmission of particular infectious diseases (e.g., CMV, hepatitis, herpes simplex, HIV, parvovirus, rubella) that, if acquired during pregnancy, may have adverse effects on the fetus, whether the infection is acquired in non-occupational or occupational environments (122). Provide such women with information on Standard and Transmission-Based Precautions appropriate for each infection (1, 123) (Table 6). *Category IB*

b. Do not routinely exclude women, on the basis only of their pregnancy or intent to be pregnant, from the care of patients with particular infections that have potential to harm the fetus, (e.g., CMV, HIV, hepatitis, herpes simplex, parvovirus, rubella, and varicella) (480–482) (Table 6). Category IB

2. Emergency Response Employees

Ensure that emergency response employees are routinely notified of infectious diseases in patients they have cared for or transported, in accordance with the mandates of the 1990 Ryan White Comprehensive AIDS Resources Emergency Act (Subtitle B 42 U.S.C. 300ff–80). *Category IA*

3. Personnel Linked to Outbreaks of Bacterial Infection

a. Perform cultures and organism typing only on personnel who are linked epidemiologically to an increase in bacterial infections caused by a pathogen associated with a carrier state; if cultures are positive, exclude personnel from patient contact until carriage is eradicated or the risk of disease transmission is eliminated. *Category IB*

b. Do not perform routine surveillance cultures of health care personnel for bacteria or multidrug-resistant organisms in the absence of a cluster or epidemic of bacterial infections in which personnel are implicated. *Category IA*

c. Do not exclude personnel from duty who are colonized by bacteria, including multidrug-resistant bacteria, who are not epidemiologically linked to an increase in infections. *Category IB*

4. Latex Hypersensitivity

a. Develop an institutional protocol for (1) evaluating and managing personnel with suspected or known latex allergy; (2) establishing surveillance for latex reactions within the facility; and (3) measuring the impact of preventive measures. Educational materials and activities should be provided to inform personnel about the manifestations and potential risk of latex allergy. *Category IB*

b. Purchasers should consider barrier effectiveness and worker acceptance (e.g., comfort, fit) when selecting gloves for use in the health care organization. When nonlatex gloves are selected, they should have comparable barrier effectiveness to latex gloves (494). *Category IB*

c. Provide workers with a list of nonlatex glove alternatives or, if possible, low-allergen latex gloves that are available within the organization. *Category IB*

d. Question all personnel for symptoms suggestive of latex allergy (e.g., localized dermatitis, workplace-related asthma) during preemployment and periodic evaluations (520). Use serologic tests only for confirmation in those who, based on clinical history, are suspected to be latex allergic. *Category IB*

e. Avoid the use of *all* latex products in personnel with a history of systemic reactions to latex. *Category IB*

f. Use nonlatex gloves or powder-free latex gloves, or double-glove with cloth or vinyl gloves beneath latex gloves for personnel with localized reactions to latex (e.g., irritant or allergic contact dermatitis). *Category IB*

g. Consider targeted substitution of nonlatex gloves and/or powder-free latex gloves in areas of the facility or among groups where glove use is high (e.g., operative suite, nursing) or in areas where large numbers of personnel have developed latex allergy (499, 527, 528). *Category IB*

h. *No Recommendation* for institution-wide substitution of nonlatex products in health care facilities to prevent sensitization to latex among health care personnel. *Unresolved Issue*

i. *No Recommendation* for the routine use of environmental abatement interventions such as laminar flow to reduce latex aeroallergens. *Unresolved issueReferences*

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Table 1. Immunobiologics and Schedules for Health Care Personnel (adapted from ACIP recommendations, reference 7)

A. Immunizing Agents Strongly Recommended for Health Care Personnel

Generic name	Primary booster dose schedule	Indications	Major precautions and contraindications	Special considerations
Hepatitis B recombinant vaccine	Two doses IM in the deltoid muscle 4 weeks apart; third dose 5 months after second; booster doses not necessary.	Health care personnel at risk of exposure to blood and body fluids	No apparent adverse effects to developing fetuses. Not contraindicated in pregnancy. History of anaphylactic reaction to common baker's yeast.	No therapeutic or adverse effects on HBV-infected persons; cost-effectiveness of prevaccination screening for susceptibility to HBV depends on costs of vaccination and antibody testing and prevalence of immunity in the group of potential vaccinees. Health care personnel who have ongoing contact with patients or blood should be tested 1-2 months after completing the vaccination series to determine serologic response.
Influenza vaccine (inactivated whole or split virus)	Annual single-dose vaccination IM with current (either whole- or split-virus) vaccine.	Health care personnel with contact with high-risk patients or working in chronic-care facilities; personnel with high-risk medical conditions and/or ≥65 years of age.	History of anaphylactic hypersensitivity after egg ingestion.	No evidence of maternal or fetal risk when vaccine was given to pregnant women with underlying conditions that render them at high risk for serious influenza complications.
Measles live-virus vaccine	One dose subcutaneously (SC); second dose at least 1 month later.	Health care personnel born in or after 1957 without documentation of a) receipt of two doses of live vaccine on or after their first birthday, b) physician-diagnosed measles, or c) laboratory evidence of immunity. Vaccine should be considered for all personnel including those born before 1957, who have no proof of immunity.	Pregnancy; immunocompromised* state; (including HIV-infected persons with severe immunosuppression) history of anaphylactic reactions following gelatin ingestion or receipt of neomycin; or recent receipt of immune globulin.	MMR is the vaccine of choice if recipients are also likely to be susceptible to rubella and/or mumps. Persons vaccinated between 1963 and 1967 with a) a killed measles vaccine alone, b) killed vaccine followed by live vaccine, or c) with a vaccine of unknown type should be revaccinated with two doses of live measles vaccine.

* Persons immunocompromised because of immune deficiency diseases, HIV infection (who should primarily not receive BCG, OPV, and yellow fever vaccines), leukemia, lymphoma or generalized malignancy or immunosuppressed as a result of therapy with corticosteroids, alkylating drugs, antimetabolites, or radiation.

Table 1. Immunobiologics and Schedules for Health Care Personnel (adapted from ACIP recommendations, reference 7)

A. Immunizing Agents Strongly Recommended for Health Care Personnel (con't)

Generic name	Primary/booster dose schedule	Indications	Major precautions and contraindications	Special considerations
Mumps live-virus vaccine	One dose SC; no booster	Health care personnel believed to be susceptible can be vaccinated. Adults born before 1957 can be considered immune.	Pregnancy; immunocompromised* state; history of anaphylactic reaction following gelatin ingestion or receipt of neomycin	MMR is the vaccine of choice if recipients are also likely to be susceptible to measles and rubella.
Rubella live-virus vaccine	One dose SC; no booster	Health care personnel, both male and female, who lack documentation of receipt of live vaccine on or after their first birthday, or of laboratory evidence of immunity. Adults born before 1957 can be considered immune except women of childbearing age.	Pregnancy; immunocompromised* state; history of anaphylactic reaction following receipt of neomycin.	Women pregnant when vaccinated or who become pregnant within 3 months of vaccination should be counseled on the theoretical risks to the fetus. The risk of rubella vaccine-associated malformations in these women is negligible. MMR is the vaccine of choice if recipients are also likely to be susceptible to measles or mumps.
Varicella zoster live-virus vaccine	Two 0.5-ml doses SC, 4-8 weeks apart if ≥13 years of age.	Health care personnel without reliable history of varicella or laboratory evidence of varicella immunity.	Pregnancy, immunocompromised* state, history of anaphylactic reaction following receipt of neomycin or gelatin. Salicylate use should be avoided for 6 weeks after vaccination.	Because 71%-93% of persons without a history of varicella are immune, serologic testing prior to vaccination may be cost-effective.

* Persons immunocompromised because of immune deficiency diseases, HIV infection (who should primarily not receive BCG, OPV, and yellow fever vaccines), leukemia, lymphoma or generalized malignancy or immunosuppressed as a result of therapy with corticosteroids, alkylating drugs, antimetabolites, or radiation.

Table 1. Immunobiologics and Schedules for Health Care Personnel (adapted from ACIP recommendations, reference 7)

B. Other Immunizing Agents Available for Health Care Personnel in Special Circumstances

Generic name	Primary/ booster dose schedule	Indications	Major precautions and contraindications	Special considerations
BCG vaccine (for tuberculosis)	One percutaneous dose of 0.3 ml; no booster dose recommended.	Health care personnel in communities where a) multidrug-resistant tuberculosis is prevalent, b) a strong likelihood of infection exists, and c) full implementation of TB infection control precautions has been inadequate in controlling the spread of infection. NOTE: BCG should be used after consultation with local and/or state health department	Immunocompromised* state and pregnancy	In the United States, tuberculosis-control efforts are directed towards early identification and treatment of cases of active tuberculosis, and preventive therapy with isoniazid for PPD converters.
Hepatitis A vaccine	Two doses of vaccine IM either (HAVRIX®) 6-12 months apart or (VAQTA®) 6 months apart.	Not routinely indicted for health care personnel in the USA. Persons who work with HAV-infected primates or with HAV in a laboratory setting should be vaccinated	History of anaphylactic reaction to alum or the preservative 2-phenoxy ethanol. Vaccine safety in pregnant women has not been evaluated; risk to fetus is likely low and should be weighed against the risk of hepatitis A in women at high risk.	Health care personnel who travel internationally to endemic areas should be evaluated for vaccination.
Meningococcal polysaccharide (quadrivalent A, C, W135, and Y) vaccine	One dose in volume and by route specified by manufacturer; need for boosters is unknown.	Not routinely indicated for health care workers in the United States.	Vaccine safety in pregnant women has not been evaluated; vaccine should not be given during pregnancy unless the risk of infection is high	May be useful in certain outbreak situations (see text).
Pneumococcal polysaccharide vaccine (23 valent)	One dose IM or SC; revaccination recommended for those at highest risk ≥5 years after the first dose	Adults who are at increased risk of pneumococcal disease and its complications because of underlying health conditions; older adults, especially those who are ≥65 of age and healthy.	The safety of the vaccine in pregnant women has not been evaluated; it should not be given during pregnancy unless the risk of infection is high.	Previous recipients of any type of pneumococcal polysaccharide vaccine who are at highest risk of fatal infection or antibody loss may be revaccinated ≥5 years after the first dose.

* Persons immunocompromised because of immune deficiency diseases, HIV infection (who should primarily not receive BCG, OPV, and yellow fever vaccines), leukemia, lymphoma or generalized malignancy or immunosuppressed as a result of therapy with corticosteroids, alkylating drugs, antimetabolites, or radiation.

Table 1. Immunobiologics and Schedules for Health Care Personnel (adapted from ACIP recommendations, reference 7)

B. Other Immunizing Agents Available for Health Care Personnel in Special Circumstances (con't)

Generic name	Primary/booster dose schedule	Indications	Major precautions and contraindications	Special considerations
Polio vaccine	IPV, two doses SC given 4-8 weeks apart, followed by a third dose at 6-12 months after the second dose. Booster doses may be IPV or OPV.	Health care personnel in close contact with persons who may be excreting wild virus and laboratory personnel handling specimens that may contain wild poliovirus.	History of anaphylactic reaction after receipt of streptomycin or neomycin. The safety of the vaccine in pregnant women has not been evaluated; it should not be given during pregnancy.	Use only IPV for immunosuppressed persons or personnel who care for immunosuppressed patients. If immediate protection against polio is needed, OPV should be used.
Rabies vaccine	Primary: HDCV or RVA, IM, 1.0 ml (deltoid area) one each on days 0, 7, 21, and 28. or HDCV, intradermally (ID), 1.0 ml, one each on days 0, 7, 21, and 28. Booster: HDCV or RVA, IM, 0.1 ml (deltoid area), day 0 only or HDCV, ID, 0.1 ml, day 0 only	Personnel who work with rabies virus or infected animals in diagnostic or research activities.		The frequency of booster doses should be based on frequency of exposure. See CDC reference for Rabies Prevention (Reference 20).
Tetanus and diphtheria (toxoids [Td])	Two doses intramuscularly (IM) 4 weeks apart; third dose 6-12 months after second dose; booster every 10 years.	All adults; tetanus prophylaxis in wound management.	First trimester of pregnancy; history of a neurologic reaction or immediate hypersensitivity reaction. Individuals with severe local (Arthus-type) reaction following previous dose of Td vaccine should not be given further routine or emergency doses of Td for 10 years.	

* Persons immunocompromised because of immune deficiency diseases, HIV infection (who should primarily not receive BCG, OPV, and yellow fever vaccines), leukemia, lymphoma or generalized malignancy or immunosuppressed as a result of therapy with corticosteroids, alkylating drugs, antimetabolites, or radiation.

Table 1. Immunobiologics and Schedules for Health Care Personnel (adapted from ACIP recommendations, reference 7)

B. Other Immunizing Agents Available for Health Care Personnel in Special Circumstances (con't)

Generic name	Primary/booster dose schedule	Indications	Major precautions and contraindications	Special considerations
Typhoid vaccines: IM, SQ, and oral	One 0.5-ml dose IM; booster doses of 0.5 ml every 2 years. (Vi CPS) OR Two 0.5 ml doses SC, 4 or more weeks apart; boosters of 0.5 ml SC or 0.1 ml intradermally every 3 years if exposure continues. OR Four oral doses on alternate days. (Ty 21a) Vaccine manufacturer's recommendation: revaccination with the entire four-dose series every 5 years.	Personnel in laboratories who frequently work with *Salmonella typhi*.	History of severe local or systemic reaction to a previous dose of typhoid vaccine. Ty 21a vaccine should not be given to immunocompromised* personnel.	Vaccination should not be considered as an alternative to the use of proper procedures when handling specimens and cultures in the laboratory.
Vaccinia vaccine (smallpox)	One dose administered with a bifurcated needle; boosters every 10 years.	Personnel who directly handle cultures of, or animals contaminated with recombinant vaccinia viruses, or orthopox viruses (monkeypox, cowpox, vaccinia, etc.) that infect humans.	Pregnancy, presence or history of eczema, or immunodeficiency in the potential vaccinees or in their household contacts.	Vaccination may be considered for health care personnel who have direct contact with contaminated dressings or other infectious material from volunteers in clinical studies involving recombinant vaccinia virus.

* Persons immunocompromised because of immune deficiency diseases, HIV infection (who should primarily not receive BCG, OPV, and yellow fever vaccines), leukemia, lymphoma or generalized malignancy or immunosuppressed as a result of therapy with corticosteroids, alkylating drugs, antimetabolites, or radiation.

Table 1. Immunobiologics and Schedules for Health Care Personnel (adapted from ACIP recommendations, reference 7)

C. Diseases for Which Postexposure Prophylaxis may be Indicated for Health Care Personnel

Disease	Prophylaxis	Indications	Major precautions and contraindications	Special considerations
Diphtheria	Benzathine penicillin, 1.2m units IM, single dose or erythromycin (1g/d) PO x 7 days.	For health care personnel exposed to diphtheria or identified as carriers.		Also administer one dose Td to previously immunized if no Td has been given in ≤ 5 years.
Hepatitis A	One IM dose of IG 0.02 ml/kg given within 2 weeks of exposure in large muscle mass (deltoid, gluteal).	May be indicated for health care personnel exposed to feces of infected persons during outbreaks.	Persons with IgA deficiency. Do not administer within 2 weeks after MMR vaccine, or within 3 weeks after varicella vaccine.	
Hepatitis B	HBIG 0.06 ml/kg IM as soon as possible (and within 7 days) after exposure (with dose 1 of hepatitis B vaccine given at a different body site). If the hepatitis B series has not been started, a second dose of HBIG should be given 1 month after the first dose.	HBV-susceptible health care personnel with percutaneous or mucous-membrane exposure to blood known to be HBsAg positive. (See Table 5)		
Meningitis	Rifampin, 600 mg PO every 12 hours for 2 days. OR Ceftriaxone, 250 mg IM, single dose OR Ciprofloxacin, 500 mg PO, single dose	Personnel with direct contact with respiratory secretions from infected persons without the use of proper precautions (e.g., resuscitating, intubating, or closely examining the oropharynx of patients)	Rifampin and ciprofloxacin are not recommended during pregnancy.	
Pertussis	Erythromycin, 500 mg qid PO, OR Trimethoprim-sulfamethoxazole 1 tablet bid PO For 14 days following exposure	Personnel with direct contact with respiratory secretions or large aerosol droplets from the respiratory tract of infected persons.		

Table 1. Immunobiologics and Schedules for Health Care Personnel (adapted from ACIP recommendations, reference 7)

C. Diseases for Which Postexposure may be Indicated for Health Care Personnel (con't)

Disease	Prophylaxis	Indications	Major precautions and contraindications	Special considerations
Rabies	For those never vaccinated HRIG 20 IU/kg, one half infiltrated around would AND HDCV or RVA vaccine, 1.0 ml, IM (deltoid area), one each on days 0, 3, 7, 14, and 28.	Personnel who have been bitten by a human or animal with rabies or had scratches, abrasions, open wounds, or mucous membranes contaminated with saliva or other potentially infective material (e.g., brain tissue)		Personnel who have previously been vaccinated, give HDCV or RCV vaccine, 1.0 ml, IM, on days 0 and 3. No HRIG is necessary.
Varicella-zoster	VZIG for persons ≤50 kg: 125 u/10kg IM; for persons >50kg: 625 u[†].	Personnel known or likely to be susceptible to varicella and who have close and prolonged exposure to an infectious health care worker or patient, particularly those at high risk or complications, such as pregnant women or immunocompromised.		Serologic testing may help in assessing whether to administer VZIG. If varicella is prevented by the use of VZIG, vaccine should be offered later.

[†] Some persons have recommended 125 u/10 kg regardless of total body weight.

Table 2. Summary of ACIP Recommendations on Immunization of Health-Care Workers with Special Conditions
(adapted from APIC recommendations, reference 7)

Vaccine	Pregnancy	HIV Infection	Severe immuno-suppression*	Asplenia	Renal failure	Diabetes	Alcoholism & alcoholic cirrhosis
BCG	UI	C	C	UI	UI	UI	UI
Hepatitis A	UI	UI	UI	UI	UI	UI	R†
Hepatitis B	R	R	R	R	R	R	R
Influenza	R§	R	R	R	R	R	R
Measles, Mumps, Rubella	C	R¶	C	R	R	R	R
Meningococcus	UI	UI	UI	R†	UI	UI	UI
Polio, Inactivated**	UI	UI	UI	UI	UI	UI	UI
Polio, Oral**	UI	C	C	UI	UI	UI	UI
Pneumococcus†	UI	R	R	R	R	R	R
Rabies	UI	UI	UI	UI	UI	UI	UI
Tetanus/diphtheria†	R	R	R	R	R	R	R
Typhoid, Inactivated & V_i	UI	UI	UI	UI	UI	UI	UI
Typhoid, Ty21a	UI	C	C	UI	UI	UI	UI
Varicella	C	C	C	R	R	R	R
Vaccinia	UI	C	C	UI	UI	UI	UI

* Severe immunosuppression can be the result of congenital immunodeficiency, leukemia, lymphoma, generalized malignancy or therapy with alkylating agents, antimetabolites, radiation, or large amounts of corticosteroids.

† Recommendation is based on the person's underlying condition rather than occupation

§ Women who will be in the second or third trimester of pregnancy during the influenza season.

¶ Contraindicated in persons with HIV infection and severe immunosuppression; see text.

** Vaccination is recommended for unvaccinated health care workers who have close contact with patients who may be excreting wild polio viruses. Primary vaccination with IPV is recommended because the risk for vaccine- associated paralysis after administration of OPV is higher among adults than among children. Health care workers who have had a primary series of OPV or IPV who are directly involved with the provision of care to patients who may be excreting poliovirus may receive another dose of either IPV or OPV. Any suspected case of poliomyelitis should be investigated immediately. If evidence suggests transmission of wild poliovirus, control measures to contain further transmission should be instituted immediately, including an OPV vaccination campaign.

R=Recommended; **C**= Contraindicated; **UI**=Use if indicated

Table 3. Summary of Suggested Work Restrictions for Health Care Personnel Exposed to or Infected with Infectious Diseases of Importance in Health Care Settings, in the Absence of State and Local Regulations (adapted from APIC recommendations, reference 7)

Disease/problem	Work restriction	Duration	Category
Conjunctivitis	Restrict from patient contact	Until discharge ceases	II
Cytomegalovirus infections	No restriction		II
Diarrheal diseases Acute stage (diarrhea with other symptoms)	Restrict from patient contact or food-handling	Until symptoms resolve	IB
Convalescent stage *Salmonella* spp.	Restrict from care of high-risk patients	Until symptoms resolve. Consult with local and state health authorities regarding the need for negative stool cultures.	IB
Diphtheria	Exclude from duty	Until antimicrobial therapy completed and 2 cultures obtained ≥ 24 hours apart are negative.	IB
Enteroviral infections	Restrict from care of infants, newborns, and immunocompromised patients	Until symptoms resolve	II
Hepatitis A	Restrict from patient contact and food-handling	Until 7 days after onset of jaundice	IB
Hepatitis B Personnel with acute or chronic hepatitis B surface antigenemia who do not perform exposure-prone procedures	No restriction;* Standard Precautions should always be observed		II
Personnel with acute or chronic hepatitis B "e" antigenemia who perform exposure-prone procedures	Do not perform exposure-prone invasive procedures until counsel from an expert review panel has been sought. The panel should review and recommend the procedures the worker can perform, taking into account the specific procedure as well as the skill and technique of the worker.†	Until HBeAg is negative	II

* Unless epidemiologically liked to transmission of infection

† See Section D.1.a.

Table 3. Summary of Suggested Work Restrictions for Health Care Personnel Exposed to or Infected with Infectious Diseases of Importance in Health Care Settings, in the Absence of State and Local Regulations (adapted from ACIP recommendations, reference 7) (con't)

Disease/problem	Work restriction	Duration	Category
Hepatitis C	No recommendation		Unresolved issue
Herpes simplex			
Genital	No restriction		II
Hands (herpetic whitlow)	Restrict from patient contact.	Until lesions heal	IA
Orofacial	Restrict from care of high-risk patients.	Until lesions heal	II
Human immunodeficiency virus	Do not perform exposure-prone invasive procedures until counsel from an expert review panel has been sought. The panel should review and recommend the procedures the worker can perform, taking into account the specific procedure as well as the skill and technique of the worker. Standard Precautions should always be observed.†		II
Measles			
Active	Exclude from duty	Until 4 days after the rash appears	IA
Postexposure (Susceptible personnel)	Exclude from duty	From the 5th day after the first exposure through the 21st day after the last exposure and/or 4 days after the rash appears	IB
Mumps			
Active	Exclude from duty	Until 9 days after onset of parotitis	IB
Postexposure (Susceptible personnel)	Exclude from duty	From the 12th day after the first exposure through the 26th day after the last exposure or until 9 days after onset of parotitis	II

† See section D.1.a.

Table 3. Summary of Suggested Work Restrictions for Health Care Personnel Exposed to or Infected with Infectious Diseases of Importance in Health Care Settings, in the Absence of State and Local Regulations (adapted from ACIP recommendations, reference 7) (con't)

Disease/problem	Work restriction	Duration	Category
Pertussis			
Active	Exclude from duty	From the beginning of the catarrhal stage through the third week after onset of paroxysms or until 5 days after start of effective antimicrobial therapy	IB
Postexposure			
(Asymptomatic personnel)	No restriction, prophylaxis recommended		II
(Symptomatic personnel)	Exclude from duty	Until 5 days after start of effective antimicrobial therapy	IB
Rubella			
Active	Exclude from duty	Until 5 days after the rash appears	IA
Postexposure (Susceptible personnel)	Exclude from duty	From the 7th day after the first exposure through the 21st day after the last exposure	IB
Scabies or pediculosis infestation	Restrict from patient contact	Until treated	IB
Staphylococcus aureus			
Active, draining skin lesions	Restrict from contact with patients and patient materials or food-handling	Until lesions have resolved	IB
Carrier state	No restriction, unless personnel are shown epidemiologically to be disseminating the organism.		IB
Streptococcal infection, Group A	Restrict from patient care or food handling	Until 24 hours after adequate treatment started	IB
Tuberculosis	Exclude from duty	Until proven non-infectious	IA

Table 3. Summary of Suggested Work Restrictions for Health Care Personnel Exposed to or Infected with Infectious Diseases of Importance in Health Care Settings, in the Absence of State and Local Regulations (adapted from ACIP recommendations, reference 7) (con't)

Disease/problem	Work restriction	Duration	Category
Varicella			
Active	Exclude from duty	Until all lesions dry and crust	IA
Postexposure (Susceptible personnel)	Exclude from duty	From the 10th day after the first exposure through the 21st day (28th day if VZIG was given) after the last exposure	IA
Zoster			
Localized, in normal person	Cover lesions; restrict from care of high-risk patients*	Until all lesions dry and crust	II
Generalized; or localized in immunosuppressed person	Restrict from patient contact	Until all lesions dry and crust	IB
Postexposure (Susceptible personnel)	Restrict from patient contact	From the 10th day after the first exposure through the 21st day (28th day if VZIG was given) after the last exposure or, if varicella occurs, until all lesions dry and crust.	IA
Viral respiratory infections, acute febrile	Consider excluding from the care of high risk patients† during community outbreak of RSV and influenza	Until acute symptoms resolve	IB

* Those susceptible to varicella and who are at increased risk of complications of varicella, such as neonates and immunocompromised persons of any age.

† High-risk patients as defined by the ACIP for complications of influenza

Table 4. Recommendation for Postexposure Prophylaxis for Percutaneous or Permucosal Exposure to Hepatitis B Virus, United States

Exposed Person	Source HBsAg* Positive	Source HBsAg Negative	Source Not Tested or Unknown
Unvaccinated	HBIG** x 1 and initiate HB vaccine†	Initiate HB vaccine	Initiate HB vaccine
Previously vaccinated			
Known responder	No treatment	No treatment	No treatment
Known nonresponder	HBIG x 2 or HBIG x 1 and initiate revaccination	No treatment	If known high-risk source treat as if source were HBsAg positive
Response unknown	Test exposed for anti-HBs‡ 1. If adequate¶, no treatment 2. If inadequate¶, HBIG x 1 and vaccine booster	No treatment	Test exposed for anti-HBs 1. If adequate, no treatment 2. If inadequate, vaccine booster

* HBsAg = Hepatitis B surface antigen
** HBIG = Hepatitis B immune globulin; dose 0.06 mg/kg IM
† HB vaccine = Hepatitis B vaccine
‡ anti-HBs = antibody to hepatitis B surface antigen
¶ adequate anti-HBs is ≥ 10 mIU/ml

Table 5. Selected Reported Etiologic Agents Causing Community or Nosocomially Acquired Gastrointestinal Infections in Developed Countries

Agent	Community-acquired Agents in Patients	Nosocomially-acquired Agents in Patients	Nosocomially-acquired Agents in Health Care Personnel
Bacterial			
Bacillus cereus	++	0	0
Campylobacter species	++++	+	0
Clostridium difficile	+	++++	+
Clostridium perfringins	+	+	0
Diarrheogenic *Escherichia coli*	++++	++	+
Salmonella species	+++	++	+
Shigella species	++	+	+
Staphyloccus aureus, toxigenic	+++	+++	0
Yersinia enterocolitica	+	+	+
Viral			
Adenovirus	++	+	+
Astrovirus	*	*	?
Calicivirus (Norwalk and norwalk-like viruses or SRSVs)	*	*	*
Coxsackievirus	++	+	+
Rotavirus	++++	++++	++
Fungal			
Candida species	+	+	0
Cryptococcus neoformans	++	+	0
Parasitic			
Cryptosporidium	++	+	+
Cyclospora	++	0	0
Entamoeba histolytica	++	+	0
Giardia lamblia	++	+	0
Isospora belli	+	0	0
Strongyloides	+	0	0

++++ Most frequently reported, +++Reported often, ++Occasionally reported, +Rarely reported. 0 Never reported

* Common but rarely reported because of limited availability of diagnostic assays

? Unknown

Table 6. Pregnant Health Care Personnel: Pertinent Facts to Guide Management of Occupational Exposures to Infectious Agents

Agent	Potential Effect on Fetus	Rate of Perinatal Transmission	Maternal Screening	Prevention
1. CMV	Hearing loss; congenital syndrome*	15% after primary maternal infection; symptomatic 5%	Antibody protects against clinical disease; routine screening not recommended	Standard Precautions
2. Hepatitis B	Hepatitis; hepatocellular cancer as adult	HBeAg pos. 90% HBeAg neg. 25%	Anti-HBsAg Anti-HBeAg	Vaccine (safe during pregnancy); Standard Precautions
3. Hepatitis C	Hepatitis	0%-15%	Anti-HCV; HCV RNA in reference labs	ISG no longer contains anti-HCV and is not recommended; Standard Precautions
4. Herpes simplex	Mucocutaneous lesions, sepsis, encephalitis; congenital malformations (rare)	Unlikely from nosocomial exposure; primary 33%-50%, recurrent 4%	Antibody testing not useful; inspection for lesions at delivery	Standard Precautions
5. HIV	AIDS by 2-3 years of age	8%-30%	Antibody by ELISA, Western blot; PCR	Avoid high-risk behaviors; consider postexposure prophylaxis following high risk needlestick; zidovudine intrapartum and post-natal for HIV- positive mothers and their babies; Standard Precautions
6. Influenza	Inconsistent	Rare	None	Vaccine (safe during pregnancy) Droplet Precautions
7. Measles	Prematurity; abortion	Rare	History, antibody	Vaccine†; Airborne Precautions
8. Parvovirus B19	Hydrops, stillbirth	Rare, 3%-9% maximum adverse outcome	IgM, IgG antibody prepregnancy; antibody protective	Droplet Precautions

* Congenital syndrome: varying combinations of jaundice, hepatosplenomegaly, microcephaly, CNS abnormalities, thrombocytopenia, anemia, retinopathy, skin and bone lesions.

† Live-virus vaccines are given routinely prior to pregnancy.

Table 6. Pregnant Health Care Personnel: Pertinent Facts to Guide Management of Occupational Exposures to Infectious Agents (con/t)

Agent	Potential Effect on Fetus	Rate of Perinatal Transmission	Maternal Screening	Prevention
9. Rubella	Congenital syndrome*	45%-50% overall; 90% in first 12 weeks	Antibody	Vaccine†; Droplet Precautions for acute infection; Contact Precautions for congenital rubella
10. Tuberculosis	Hepatomegaly, pulmonary, CNS	Rare	Skin test	INH ± Ethambutol; Airborne Precautions
11. Varicella-Zoster	Malformations (skin, limb, CNS, eye); chickenpox	Total 25%; congenital syndrome (0-4%)	Antibody	Vaccine†; VZIG within 96 hours of exposure if susceptible Airborne; and Contact Precautions

* Congenital syndrome: varying combinations of jaundice, hepatosplenomegaly, microcephaly, CNS abnormalities, thrombocytopenia, anemia, retinopathy, skin and bone lesions.

† Live-virus vaccines are given routinely prior to pregnancy.

Adapted from Siegel JD. Risk and exposure for the pregnant health-care worker. In: Olmstead RN, ed. APIC infection control and applied epidemiology: principles and practices/Association for Professionals in Infection Control and Epidemiology, Inc. St. Louis: Mosby-Year Book, Inc.;1996.22-2-22-3 (Table 22-1).

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Part VI

Department of Labor

Mine Safety and Health Administration

30 CFR Part 100

Criteria and Procedures for Proposed Assessment of Civil Penalties; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 100

RIN 1219–AA49

Criteria and Procedures for Proposed Assessment of Civil Penalties

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: This proposed rule revises the Mine Safety and Health Administration's (MSHA's) existing civil penalty assessment amounts under part 100. The proposal also adds a new provision which would codify the civil penalty amounts that may be assessed under Sections 110(a), 110(b), and 110(g) of the Federal Mine Safety and Health Act of 1977 (Mine Act). These changes are made as a result of a mandate by Congress in the Debt Collection Improvement Act of 1996, which requires that all civil penalties be increased by up to 10 percent, and that they be adjusted at least once every four years thereafter according to the formula specified in the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act).

DATES: Written comments must be submitted on or before November 7, 1997.

ADDRESSES: Comments on the proposed rule may be transmitted by electronic mail, fax, or mail. Comments by electronic mail must be clearly identified as such and sent to this e-mail address: psilvey@msha.gov. Comments by fax must be clearly identified as such and sent to: Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, 703–235–5551. Send mail comments to: Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, Room 621, 4015 Wilson Boulevard, Arlington, Virginia 22203–1984. Interested persons are encouraged to supplement written comments with computer files or disks; please contact the Agency with any questions about format.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director; Office of Standards, Regulations and Variances, MSHA; 703–235-1910 (voice), 703–235–5551 (facsimile), psilvey@msha.gov (Internet e-mail).

SUPPLEMENTARY INFORMATION:

I. Rulemaking Background

Under Sections 105(a) and 110 of the Mine Act, MSHA is required to assess a civil penalty for each violation of the Mine Act and the mandatory safety and health standards promulgated by the Agency. The Mine Act originally provided in 1977 that the penalty for each violation would not exceed $10,000, and that the maximum penalty for failure to correct a violation cited under Section 104(a) within the period permitted for its correction would not exceed $1,000 for each day that the violation continued. Miners who willfully violated the mandatory safety standards relating to smoking or the carrying of smoking materials into a mine would be assessed a civil penalty of not more than $250 for each violation.

MSHA promulgated its first regulations relating to civil penalty assessments under the Mine Act on May 30, 1978 (43 FR 23514). This rule included a penalty conversion table for regular assessments based on the six criteria enumerated in 30 CFR 100.3(a). On May 21, 1982 (47 FR 22286), MSHA promulgated a rule that revised its regular assessment civil penalty table, further defined the criteria for issuing special assessments, and created a $20 single penalty assessment for those violations that were not reasonably likely to result in reasonably serious injury or illness and which were abated in a timely manner. There was no provision in either rule relating to civil penalties assessed for failing to abate violations of the Mine Act or for smoking or carrying smoking materials into a mine, as these penalty amounts were set by the Mine Act.

On November 5, 1990, the Omnibus Budget Reconciliation Act of 1990 (Budget Act), Pub.L. 101–508, was signed into law. Section 3102 of the Budget Act amended the Mine Act and raised the maximum MSHA civil penalty per violation from $10,000 to $50,000. The $1,000 per day civil penalty for failure to correct a violation under Section 104(a) was raised to $5,000 per day. The miner smoking penalty remained at $250. Following the passage of the Budget Act, MSHA published a final rule on January 24, 1992 (57 FR 2968), as amended December 21, 1992 (57 FR 60690), which implemented the penalty increases prescribed by the Budget Act and accounted for inflation since 1982. A new civil penalty conversion table was published and the single penalty assessment was also raised to $50 by this final rule.

Also in 1990, Congress passed P.L. 101–410, the Inflation Adjustment Act. On April 26, 1996, the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (OCRAA), Pub.L. 104–131, was passed. Chapter 10 of the OCRAA, titled as the ''Debt Collection Improvement Act of 1996'' (DCIA), modifies the Inflation Adjustment Act and requires that the head of each agency adjust by regulation each civil monetary penalty provided for by law within its jurisdiction pursuant to the inflation adjustment described under Section 5 of the DCIA. The first adjustment of a civil monetary penalty may not exceed 10 percent of the existing penalty. The revised civil penalties will apply only to those violations occurring after the date the final rule takes effect.

II. Discussion and Summary of the Proposed Rule

A. General Discussion

MSHA is required by law to assess a civil penalty for each violation of the Mine Act or its regulations. The civil penalties are intended to serve as a means of encouraging mine operators to comply with the law and to deter them from allowing hazardous or unhealthy conditions to exist in their mines. In 1990, the maximum civil penalty that could be assessed for each violation of the Mine Act was raised from $10,000 to $50,000 under the Budget Act. MSHA issued regulations reflecting this increase on January 24, 1992 (57 FR 2968), as amended December 21, 1992 (57 FR 60690).

When Congress originally passed the Inflation Adjustment Act in 1990, the legislative history stated:

> In the past 60 years, but most notably in the last 25 years, Congress has enacted numerous statutes intended to regulate conduct deemed harmful to the health and welfare of the U.S. citizenry. Typically, such statutes include provision for civil fines (''civil monetary penalties'') to be used both to punish and to deter violations of the statute.
>
> Recent studies, however, suggest that the desired impact of these penalties has eroded over time due to the failure to adjust civil penalties to keep pace with inflation. Thus, for example, where penalties to enforce workplace safety have remained unchanged since the enactment of the Occupational Health and Safety Act in 1970, such penalties have been effectively reduced to one-third of their original value if one takes into account the intervening rate of inflation.

In passing the DCIA, Congress again demonstrated its concern that civil penalties continue to have the same impact as was originally intended. MSHA is increasing its civil penalties in order to comply with Congress' mandate that agencies make inflation adjustments in their civil penalties.

Under the DCIA, MSHA is required to increase these civil penalties by an

amount not to exceed 10 percent. The amount of the increase is determined by the formula found in Section 5 of the Inflation Adjustment Act. Under Section 5, civil monetary penalties are to be increased by a cost-of-living adjustment. The statute defines ''cost-of-living adjustment'' as the percentage by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted. The term ''Consumer Price Index'' (CPI) means the Consumer Price Index for all-urban consumers published by the Department of Labor.

In order to determine the current cost-of-living adjustment for MSHA's civil penalties, MSHA made the following calculations:

469.5 (the CPI for the month of June 1996, the calendar year preceding the current adjustment.)

419.9 (the CPI for the month of June 1992, the calendar year in which the MSHA civil penalties were last adjusted)

469.5/419.9 = 1.12 (inflation adjustment factor)

By using the 1.12 inflation adjustment factor, MSHA would in effect increase its civil penalty assessments by 12 percent. However, because Congress has imposed a cap on the maximum increase of 10 percent, the increases contained within this rule would not exceed 10 percent.

In order to determine the current cost-of-living adjustment for the miner smoking penalty, MSHA made the following calculations:

469.5 (the CPI for the month of June 1996, the calendar year preceding the current adjustment.)

195.3 (the CPI for the month of June 1978, the calendar year in which the civil penalty was last adjusted)

469.5/195.3 = 2.4 (inflation adjustment factor)

Using the inflation adjustment factor of 2.4, MSHA would have to increase the miner smoking penalty 140 percent. However, as stated above, Congress has imposed a 10 percent cap on civil penalty increases. Therefore, all civil penalties under this proposal have been adjusted by multiplying each penalty by 1.10 (a 10 percent increase) and rounding to the nearest dollar.

B. Section-by-Section Analysis

The following section-by-section analysis explains the proposed rule and its effect on existing standards. The standards in part 100 apply to all mine operators.

Section 100.3 Determination of Penalty Amount; Regular Assessment

Paragraph (a) of this standard would be amended to codify Section 110(a) of the Mine Act. This revision would also reflect the increase of the maximum civil penalty to $55,000 per violation. Paragraph (g) of this standard would set forth a revised penalty conversion table in which points assigned for each of the criteria enumerated in this section are totaled and a correlating civil penalty is assessed. Using the 10 percent maximum penalty increase prescribed by the DCIA, the civil penalty conversion table found in this section would be adjusted to reflect civil penalties ranging from $66 to $55,000.

Section 100.4 Determination of Penalty; Single Penalty Assessment

The single penalty assessment under this section would increase from $50 to $55, which reflects a 10 percent maximum increase.

Section 100.5 Determination of Penalty; Special Assessment

This section pertains to violations which are of such a nature or seriousness that MSHA cannot determine an appropriate penalty using the regular assessment formula or the single assessment provision. This section also addresses penalties which may be assessed to an operator for failure to correct a violation within the period required. Finally, this section addresses penalties which may be assessed for miners who willfully use or carry smoking materials underground.

The special assessment penalty is determined by experienced Agency mine safety and health specialists, based on the facts and circumstances of each case. Prior to a special assessment, Agency field personnel review certain categories of violations for special assessment.

The civil penalty provisions found in Sections 110(b) and 110(g) of the Mine Act would be codified under this section. The maximum civil penalty for failure to correct a violation for which a citation has been issued under Section 104(a) of the Mine Act would be increased to $5,500 per violation per day. The maximum civil penalty for willful violation of mandatory standards pertaining to smoking or carrying of smoking materials into a mine by any miner would be raised to $275 per violation.

IV. Executive Order 12866

In accordance with Executive Order 12866, MSHA has prepared a preliminary Regulatory Impact Analysis (RIA) of the estimated costs and benefits associated with the proposed revisions of the criteria and procedures for proposed assessment of civil penalties.

The preliminary RIA containing this analysis is available from MSHA. MSHA welcomes comments on its analysis and methodology. The Agency estimates that the proposal would cost the mining industry slightly more than $3 million annually. All penalties collected by MSHA are deposited in the U.S. Treasury.

Based upon the RIA, MSHA has determined that this rule is not an economically significant regulatory action pursuant to section 3(f)(1) of Executive Order 12866.

V. Paperwork Reduction Act

This proposed rule contains no information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

VI. Regulatory Flexibility Act

In accordance with § 605 of the Regulatory Flexibility Act (RFA), MSHA certifies that the civil penalty proposal does not have a significant economic impact on a substantial number of small entities. This proposed regulation does no more than to codify existing law and to mechanically increase certain civil money penalties to account for inflation, pursuant to specific directions set forth in the Federal Civil Penalties Inflation Adjustment Act, as amended. The statute specifies the procedure for calculating the adjusted civil money penalties and does not allow the Department to vary the calculation to minimize the effect on small entities. Moreover, the actual amount of the increase in penalties would not meet the threshold set forth in the Regulatory Flexibility Act. MSHA discusses its quantitative analysis warranting this conclusion below.

In the past, MSHA considered small mines to be mines with fewer than 20 employees. However, for the purposes of the RFA and this certification, MSHA has also evaluated the impact of the proposal on mines with 500 employees or fewer. No small governmental jurisdictions or nonprofit organizations are significantly or uniquely affected. Under the Small Business Regulatory Enforcement Fairness Act (SBREFA) amendments to the RFA, MSHA must include in the proposal a factual basis for this certification. The Agency also must publish the regulatory flexibility certification statement in the **Federal Register**, along with the factual basis, followed by an opportunity for comment by the public.

MSHA specifically solicits comment on the Agency's determination in this regulatory flexibility certification statement, including cost data and data sources. To facilitate the public participation in the rulemaking process, MSHA will mail a copy of the proposed rule, including the preamble and regulatory flexibility certification statement, to mine operators and miners' representatives.

Factual basis for certification. MSHA explains below the Agency's quantitative approach in reaching its conclusion on the impact of the statutory provisions, as implemented by the rule. The Agency performed its analysis separately for two groups of mines: the coal mining sector as a whole, and the metal and nonmetal mining sector as a whole. Based on a review of available sources of public data on the mining industry, the Agency believes that a quantitative analysis of the impacts on various mining subsectors may not be feasible. The Agency requests comments, however, on whether there are special circumstances that warrant separate quantification of the impact of this proposal on any mining subsector, and information on how it might readily obtain the data necessary to conduct such a quantitative analysis. The Agency is fully cognizant of the diversity of mining operations in each sector, and has applied that knowledge as it developed the proposal.

Under the SBREFA amendments to the RFA, MSHA must use the SBA definition for a small mine of 500 employees or fewer or, after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. The alternative definition could be the Agency's traditional definition of ''fewer than 20 miners,'' or some other definition. As reflected in the certification, MSHA analyzed the costs of this proposal for small and large mines using both the traditional Agency definition, and SBA's definition, as required by RFA, of a small mine. The Agency compared the costs of the proposal for small mines in each sector to the revenues for each sector for every size category analyzed. In each case, the results indicated that the costs as a percent of revenue are less than 1 percent.

The following table summarizes the results of this analysis.

SMALL MINES: COSTS COMPARED TO REVENUES

	Number of mines	Estimated cost of proposal	Estimated revenue (millions)	Estimated cost per mine	Cost as percent of revenue
Coal Mines:					
Small <20	1601	$1,392,900	$836	$870	.17
Large >=20	1043	907,500	18,672	870	.005
Small <500	2633	2,290,800	18,689	870	.01
Large >=500	11	9,600	819	870	.002
All Mines	2644	2,300,400	19,508	870	.01
M/NM Mines:					
Small <20	9195	631,700	11,929	70	.005
Large >=20	1540	105,800	26,071	70	.000
Small <500	10706	735,500	32,134	70	.002
Large >=500	29	2,000	5,866	70	.000
All Mines	10735	737,500	38,000	70	.002

VII. Unfunded Mandates

The Unfunded Mandates Reform Act was enacted in 1995. While much of the Act is designed to assist the Congress in determining whether its actions will impose costly new mandates on State, local, and tribal governments, the Act also includes requirements to assist Federal agencies to make this same determination with respect to regulatory actions.

MSHA has determined that, for purposes of § 202 of the Unfunded Mandates Reform Act of 1995, this proposal does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments in the aggregate of more than $100 million, or increased expenditures by the private sector of more than $100 million. Moreover, the Agency has determined that for purposes of § 203 of that Act, this proposed rule does not significantly or uniquely affect small governments.

Analysis. Based on the analysis in the Agency's preliminary Regulatory Impact Statement, the cost of this proposed rule for the entire mining industry is less than $100 million. Accordingly, there is no need for further analysis under § 202 of the Unfunded Mandates Reform Act.

MSHA has concluded that small governmental entities are not significantly or uniquely impacted by the proposed regulation. The proposed rule will impact approximately 2,545 coal and 10,563 metal and nonmetal mining operations.

When MSHA issues the proposed rule, the Agency will affirmatively seek input of any state, local, and tribal government which may be affected by the civil penalty rulemaking. This would include state and local governmental entities who operate sand and gravel mines in the construction and repair of highways and roads. MSHA will mail a copy of the proposed rule to approximately 350 such entities.

Following is a state-by-state listing of sand and gravel mines owned or operated by state or local governments according to MSHA records. The Agency welcomes any comments or corrections.

STATE/COUNTY OWNED/OPERATED SAND AND GRAVEL OPERATIONS

[As of 12/08/95]

State	State owned	County owned	City owned
ARIZONA	2	2	.....

STATE/COUNTY OWNED/OPERATED SAND AND GRAVEL OPERATIONS—Continued

[As of 12/08/95]

State	State owned	County owned	City owned
ARKANSAS		5	
CALIFORNIA		4	
COLORADO	4	27	
IDAHO		13	
ILLINOIS		2	
INDIANA		5	
IOWA		2	
KANSAS		2	
MAINE	5		
MARYLAND			6
MICHIGAN		8	
MISSISSIPPI		5	
MISSOURI		8	
MONTANA	8	34	
NEBRASKA		2	
NEVADA		1	
NEW MEXICO		4	
NEW YORK		15	95
OKLAHOMA		2	
OREGON		11	
PENNSYLVANIA			1
SOUTH CAROLINA		1	
SOUTH DAKOTA		15	
TENNESSEE		3	
TEXAS		6	
UTAH	1	5	
VERMONT			11
WASHINGTON		9	
WISCONSIN		20	1
WYOMING		1	
TOTAL (346)	20	212	114

List of Subjects in 30 CFR Part 100

Mine safety and health, Penalties.

Dated: September 2, 1997.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

It is proposed to amend part 100, subchapter P, chapter I, title 30 of the Code of Federal Regulations as follows:

PART 100—CRITERIA AND PROCEDURES FOR PROPOSED ASSESSMENT OF CIVIL PENALTIES

1. The authority citation for part 100 continues to read as follows:

Authority: 30 U.S.C. 815, 820 and 957.

2. Section 100.3 is amended by revising the introductory text of paragraph (a) and revising paragraph (g) to read as follows:

§ 100.3 Determination of penalty amount; regular assessment.

(a) General. The operator of any mine in which a violation occurs of a mandatory health or safety standard or who violates any other provision of the Mine Act, shall be assessed a civil penalty of not more than $55,000. Each occurrence of a violation of a mandatory safety or health standard may constitute a separate offense. The amount of the civil penalty proposed shall be based upon the formula set forth in this section. The formula is based on the general criteria described in sections 105(b) and 110(i) of the Act. These criteria are:

* * * * *

(g) Penalty conversion table. The following penalty conversion table shall be used to convert the accumulation of penalty points to the appropriate proposed monetary assessment.

PENALTY CONVERSION TABLE

Points	Penalty
20 or fewer	66
21	73
22	79
23	86
24	92
25	99
26	109
27	119
28	129
29	139
30	149
31	162
32	175
33	188

PENALTY CONVERSION TABLE—Continued

Points	Penalty
34	201
35	215
36	231
37	248
38	264
39	281
40	297
41	321
42	347
43	371
44	396
45	420
46	453
47	486
48	570
49	679
50	796
51	936
52	1,086
53	1,247
54	1,419
55	1,603
56	1,815
57	2,041
58	2,279
59	2,531
60	2,796
61	3,098
62	3,416

PENALTY CONVERSION TABLE—Continued

Points	Penalty
63	3,748
64	4,096
65	4,400
66	4,620
67	4,840
68	5,060
69	5,280
70	5,500
71	5,775
72	6,050
73	6,325
74	6,600
75	6,875
76	7,150
77	7,700
78	8,250
79	8,800
80	9,350
81	10,450
82	11,550
83	12,650
84	13,750
85	14,850
86	16,500
87	18,700
88	20,900
89	23,100
90	25,300
91	27,500
92	30,250
93	33,000

PENALTY CONVERSION TABLE—Continued

Points	Penalty
94	35,750
95	38,500
96	41,250
97	44,000
98	46,750
99	49,500
100	55,000

* * * * *

3. Section 100.4 is amended by revising paragraph (a) to read as follows:

§ 100.4 Determination of penalty; single penalty assessment.

(a) An assessment of $55 may be imposed as the civil penalty where the violation is not reasonably likely to result in a reasonably serious injury or illness (non-S&S) and is abated within the time set by the inspector. If the violation is not abated within the time set by the inspector, the violation will not be eligible for the $55 single penalty and will be processed through either the regular assessment provision (§ 100.3) or special assessment provision (§ 100.5). If the violation meets the criteria for excessive history under § 100.4(b), the violation will not be eligible for the $55 single penalty and will be processed through the regular assessment provision (§ 100.3).

* * * * *

4. Section 100.5 is amended by redesignating the introductory text as paragraph (a); paragraphs (a) through (h) as paragraphs (a) (1) through (8); concluding text as paragraph (b); and by adding new paragraphs (c), and (d) to read as follows:

§ 100.5 Determination of penalty; special assessment.

* * * * *

(c) Any operator who fails to correct a violation for which a citation has been issued under Section 104(a) of the Mine Act within the period permitted for its correction may be assessed a civil penalty of not more than $5,500 for each day during which such failure or violation continues.

(d) Any miner who willfully violates the mandatory safety standards relating to smoking or the carrying of smoking materials, matches, or lighters shall be subject to a civil penalty which shall not be more than $275 for each occurrence of such violation.

[FR Doc. 97–23731 Filed 9–5–97; 8:45 am]

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federal register

Monday
September 8, 1997

Part VII

Environmental Protection Agency

Regulatory Reinvention (XL) Pilot Projects; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5888–5]

Regulatory Reinvention (XL) Pilot Projects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Publication of proposed Project XL Final Project Agreement (FPA) for Vandenberg Air Force Base and related documents.

SUMMARY: EPA is announcing the publication of the Project XL Final Project Agreement (FPA) for Vandenberg Air Force Base in Santa Barbara County, California. The FPA is a voluntary agreement developed collaboratively by the Department of Defense, Vanderberg Air Force Base, the Santa Barbara Air Pollution Control District, local community members and EPA. Project XL, announced in the **Federal Register** on May 23, 1995 (FRL–5197–9), gives regulated sources the flexibility to develop alternative strategies that will replace or modify specific regulatory requirements on the condition that they produce greater environmental benefits. EPA has set a goal of implementing a total of fifty projects undertaken in full partnership with the states.

FOR FURTHER INFORMATION: To obtain a copy of the Proposed Final Project Agreement or Supporting Documents contact: John Walser (415) 744–1257; US EPA Region IX; Vandenberg Project XL Lead, AIR–3; 75 Hawthorne Street, San Francisco, Ca. These documents are also available via the internet at the following location: ''http://www.epa.gov/ProjectXL''. To be included on the Vandenberg Project XL mailing list to receive information about future public meetings, XL progress reports, and other mailings from Vandenberg on the XL project, or for questions about the Proposed FPA contact John Walser at (415) 744–1257.

DATES: Comments. All public comments must be received on or before October 8, 1997.

ADDRESSES: Comments. Written comments should be submitted in duplicate to: John Walser; US EPA; Vandenberg Project XL Lead, AIR–3; 75 Hawthorne Street, San Francisco, Ca.

Docket. A docket containing supporting information used in developing this rulemaking, including the draft FPA and supporting materials, is available for public inspection and copying at U.S. EPA, Region IX, AIR–3; 75 Hawthorne Street, San Francisco, Ca., during normal business hours, and at EPA's Water Docket (Docket name ''XL/Envest-Vandenberg AFB''); Mailcode 4101, 401 M Street, SW, Washington, DC 20460. For access to the Water docket materials, call (202) 260–3027.

For information on all other aspects of Project XL contact Christopher Knopes at the following address: Emerging Sectors and Strategies Division; United States Environmental Protection Agency; 3202 Mall; 401 M Street, S.W.; Mail Code 2129; Washington, DC 20460. The telephone number for the Division is (202) 260–5754. The facsimile number is (202) 401–6637. Additional information on Project XL, including documents referenced in this notice, other EPA policy documents related to Project XL, regional XL contacts, application information, and descriptions of existing XL projects and proposals, is available via the internet at ''http://www.epa.gov/ProjectXL'' and via an automated fax-on-demand menu at (202) 260–8590.

Dated: September 2, 1997.

Christopher Knopes,

Acting Director, Emerging Sectors and Strategies Division.

FINAL PROJECT AGREEMENT

VANDENBERG AIR FORCE BASE

AIR QUALITY PROJECT XL/ENVVEST INITIATIVE

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Preamble

This Final Project Agreement (FPA or ''Agreement'') is part of President Clinton's Reinventing Environmental Regulation Initiative to test innovative approaches to environmental protection. Under this Agreement, Vandenberg Air Force Base will go beyond what is required by regulation and achieve superior environmental performance at a lower cost. By 30 November, 2002, the Base will reduce its annual emissions of ozone precursors into the air by 10 tons or more. As a result of this initiative, Vandenberg will no longer be a potential major source of air pollution under Title V of the Clean Air Act.

This Agreement states the intention of the United States Environmental Protection Agency (''EPA''), the 30th Space Wing at Vandenberg Air Force Base, California (''Vandenberg''), and the Santa Barbara County Air Pollution Control District (''District'') (collectively hereinafter referred to as ''the parties'') to carry out a pilot project pursuant to the 1995 Memorandum of Agreement between the Department of Defense (''DOD'') and EPA on Regulatory Reinvention Projects [1] testing innovative approaches to environmental protection. The program resulting from the MOA is called Project XL/ENVVEST and represents an initiative to develop new approaches for meeting DOD and EPA responsibilities while achieving better overall environmental performance at lower cost than expected under existing regulatory approaches. The ENVVEST program mirrors and supports EPA's regulatory relief efforts under Project XL.

The Vandenberg proposal follows President Clinton's mandate that regulatory reinvention under Project

[1] *See* Attachment 1, ''Memorandum of Agreement between the Department of Defense and the U.S. Environmental Protection Agency on Regulatory Reinvention Pilot Project,'' November 2, 1995.

XL/ENVVEST put the focus on progress rather than process. Vandenberg proposes a phased emissions reduction program. In the short-term, the focus will be on emission reductions from boilers, furnaces, and process heaters. In the long-term, the focus will be on opportunities for emission reductions from internal combustion engines, solvent and surface coating applications or other suitable sources of ozone precursors.

The District and EPA, in return for the effort by Vandenberg, will allow Vandenberg to use innovative ways to comply with District Rule 370[2] and the District's Title V Federal Operating Permit Program.

The commitment by Vandenberg to achieve significant and superior environmental benefits, as detailed in this Agreement, will be formally submitted by the District to EPA for approval into the Santa Barbara County portion of the California State Implementation Plan (''SIP''). The District will also oversee the execution of the plan and provide technical assistance.

I. Overview—Purpose of This Agreement

This Agreement is a joint statement of the parties' intentions with regard to the Vandenberg Air Quality Project XL/ENVVEST Initiative. This Agreement is not intended to create legal rights or to be a contract or a regulatory action, such as a permit or rule. While it does not give rise to any rights enforceable in a legal action either to compel performance of the Agreement or for damages, it is intended to clearly state the plans of the parties and to represent the firm commitment of each party to carry out the project.

II. Description of the Project

A. General Project Description

The 30th Space Wing at Vandenberg Air Force Base is located on the central coast of California about 150 miles northwest of Los Angeles. Covering more than 98,000 acres, it is the third largest Air Force installation, and is the only point in the United States from which unmanned government and commercial satellites are launched into polar orbit and from which intercontinental ballistic missiles are launched to verify weapon system performance.

The mission of the 30th Space Wing is to: (1) Conduct and support space and missile launches; (2) operate the Western Test Range; (3) respond to world-wide military contingencies; and (4) host the Vandenberg community. Vandenberg, like other military installations, differs from civilian stationary sources in that the base hosts and supports a unique and wide variety of functions and activities. These activities include residential housing, schools, recreational parks, wildlife reserves, shopping centers, industrial maintenance, airfield operations, and various other mission related activities. As such, base activities create criteria pollutants normally associated with residential, commercial, and light industrial operations. Most of the stationary source ozone precursor emissions at the base are generated by boilers, furnaces, process heaters, and internal combustion engines.

Vandenberg views environmental compliance as integral to its mission and, therefore, directs significant resources to ensure compliance with all environmental laws and regulations. With the advent of regulatory reinvention and the creation of Project XL/ENVVEST, Vandenberg saw the opportunity to test alternative ways of achieving environmental compliance. Vandenberg evaluated its environmental compliance obligations and identified areas where regulatory relief would likely result in greater environmental benefits. As a result of this evaluation, Vandenberg submitted a Project XL/ENVVEST proposal requesting relief from District Regulation XIII, Part 70 Operating Permit Program. Under this proposal, Vandenberg proposed to use resources allocated for environmental compliance purposes to implement pollution prevention activities that would ultimately have a greater environmental benefit than compliance with District Regulation XIII.

Regulation XIII is an EPA approved and federally enforceable stationary source operating permit program, implementing Title V of the Clean Air Act (''Title V'') and 40 CFR Part 70 (''Part 70''), Title V supporting regulations. Regulation XIII requires major stationary sources[3] to apply for and obtain a Part 70 operating permit. The objective of such permits is to create a comprehensive document clearly spelling out all of a source's Clean Air Act obligations. While Regulation XIII generally does not impose new substantive requirements on sources, it does enhance environmental compliance with existing requirements.

Under the District Rules in effect in 1996, Vandenberg was a ''major stationary source'' for purposes of Part 70 and subject to the permitting requirements of Regulation XIII. This classification was based on Vandenberg's potential to emit at least 100 tons per year of oxides of nitrogen (''NO_X''). Actual emissions of NO_X at Vandenberg, however, are approximately 50 tons per year. Vandenberg, in cooperation with the District and Region IX, realized that if actual emissions used to make a Title V applicability determination could be reduced and if the District exercised its regulatory discretion, then the facility would be eligible to comply with District Rule 370, Potential to Emit—Limitations for Part 70 Sources, a rule that exempts a source from Title V if the actual emissions from the source are less than half of the potential to emit threshold for Regulation XIII. A source that complies with Rule 370 by not exceeding actual emissions of 50 tons per year is not subject to Regulation XIII and, therefore, is not required to obtain a Part 70 permit.

The District is currently classified as a ''moderate'' nonattainment area for the federal one-hour ozone standard. For such areas, a ''major stationary source'' subject to the permitting requirements of Title V is one whose potential to emit equals or exceeds 100 tons per year of any regulated pollutant. In 1996, however, the District experienced a number of federal ozone standard violations that may require EPA to reclassify the District as a ''serious'' nonattainment area. If this occurs, the applicable definition of major stationary source for Part 70 purposes under Regulation XIII and Rule 370 will be lowered to 50 tons potential to emit or 25 tons actual emissions of an ozone precursor.

The Parties acknowledge that EPA has adopted new federal standards for ozone and particulate matter. It is unclear how these new standards will affect Santa

[2] Rule 370 is based on a model Title V prohibitory rule that was developed cooperatively between EPA Region IX and the California Air Resources Board. Pursuant to the applicability section of Rule 370, only sources with actual emissions less than 50% of a major source threshold are eligible for coverage (See Rule 370 at Attachment 2).

[3] To be classified as a ''major stationary source'' in Santa Barbara County, a source must emit, or have the potential to emit, 100 tons per year of any regulated air pollutant or 10 tons per year of any hazardous air pollutant (as defined in section 112 (b) of the Clean Air Act) , or 25 tons per year of a combination of any hazardous air pollutants. Ozone nonattainment areas were classified according to the severity of the nonattainment based on the design value of a particular Air Quality Control Region at the time of the passage of the Clean Air Act Amendments of 1990 (Pub. L. 101–549). In the case of the Santa Maria-Santa Barbara-Lompoc area, that area was classified as a ''Moderate'' nonattainment area for ozone under the provisions of 42 U.S.C.A. section 7511(a) [Clean Air Act § 181(a)]. All moderate areas were required to meet the ozone National Ambient Air Quality Standards by 15 November 1996.

Barbara County's nonattainment status. In light of the above, the parties recognize the likelihood that the applicable thresholds for the District's Regulation XIII and Rule 370 may be lowered to meet the requirements for serious ozone nonattainment areas. Therefore, this Agreement has been structured to allow the Vandenberg Project XL/ENVVEST Initiative to proceed while meeting the new more stringent definition of major stationary source.

Together, Region IX, the District, and Vandenberg identified areas of regulatory flexibility that allow the District to determine that Vandenberg may be classified as a non-major or minor source pursuant to Rule 370.[4] First, the District amended Rule 1301[5] to allow Vandenberg to exclude from its Title V major source applicability determination, emissions from tactical support equipment, infrastructure maintenance equipment, and building maintenance equipment that meet the EPA definition of ''nonroad engine.''

Second, the District will use its discretion to modify Rule 1301 to allow Vandenberg to group certain sources at the base for the purposes of Title V applicability by the methods set forth in the EPA 2 August 1996 policy entitled ''Major Source Determinations for Military Installations under the Air Toxics, New Source Review, and Title V Operating Permit Programs of the Clean Air Act'' (''Act'').

The rule changes are contingent upon Vandenberg obtaining approval of and implementing a plan that achieves a reduction in annual emissions of ozone precursors by at least 10 tons by 30 November 2002. The rule changes and this Agreement will not affect Vandenberg's major stationary source designation for programs other than Title V, (e.g., Prevention of Significant Deterioration/New Source Review (PSD/NSR)).

B. Conformity to the Memorandum of Agreement

The following section addresses criteria for consideration under the DOD/EPA Memorandum of Agreement.

1. Regulatory Flexibility

Information pertaining to conformance with this criterion is contained in the preceding section.

2. Cost Savings and Paperwork Reduction

Vandenberg expects to realize cost savings and paperwork reduction by being able to comply with Rule 370 in lieu of Regulation XIII and complying with the obligations to obtain a Title V permit.

Administrative and enforcement costs incurred by the District, for the development and implementation of this initiative, will be documented and made available to the public. Costs that qualify as ''reimbursable costs'' under District Rule 210.I.C. will be accounted for separately and will be reimbursed by Vandenberg from DOD ENVVEST funds. In consultation with Vandenberg, the District will establish an operating budget to ensure maximum availability of funds for emission reduction projects.

3. Description of Stakeholder Involvement

The base has consulted with the Vandenberg Community Advisory Board (''CAB''), and the District Community Advisory Council (''CAC'') in formulating this Agreement. The mission of the CAB is to promote community awareness and to review the remedial cleanup process at Vandenberg. This mission has now been expanded to address the Vandenberg Project XL/ENVVEST initiative. The CAC provides advice regarding air quality issues to the Air Pollution Control District Board of Directors. Pursuant to guidance from the Board, a subcommittee was created to participate in this initiative. Each body has met twice to receive briefings, discuss the initiative, and provide input.

The parties have and will continue to issue press releases, run informational notices in the newspaper and sponsor public meetings, beginning with the initial meeting in October 1996, and every 6 months after execution of this Agreement, to advise interested members of the public on the progress being made toward meeting the FPA goals. The meetings shall inform the public of the steps taken to reduce pollution, include information on proposed steps to meet the goals of the FPA and solicit comment from the public on the progress made towards meeting the goals of the Agreement, or any other matter relevant to the execution of the Agreement. These meetings will be held in locations in Santa Barbara County that are accessible to the public and at a time and place agreed to by the parties to this Agreement.[6]

4. Environmental Results: Innovation/Pollution Prevention

a. Background. Through the process outlined in this FPA, Vandenberg proposes to implement innovative strategies in the selection and application of advanced emission reduction technologies to reduce emissions below levels they would have been at if the project were not being undertaken. Additionally, Vandenberg proposes to categorize the emission reduction potential of the available equipment to apply the most efficient and cost-effective technologies appropriate to the pollution generating equipment.

During the initial phase of this initiative, Vandenberg will focus on boilers, which are the single largest stationary source of ozone precursor emissions. Vandenberg operates over 200 boilers rated between 100,000 Btu/hr and 5 MMBtu/hr. These units are operated for spatial heating and heated water applications throughout the base and are typically fired on natural gas. Vandenberg has recently researched the feasibility of modifying boilers rated between 2 MMBtu/hr and 5 MMBtu/hr in order to obtain emission reductions. Throughout the course of this initiative, Vandenberg will assess the emission reduction potential from a variety of sources, including but not limited to internal combustion engines and solvent and surface coating applications.

b. Investigation And Application Of Innovative Control Strategies. In order to apply the most appropriate and cost effective emission control technologies to boilers, Vandenberg is in the process of categorizing these emission units by process type and by annual operating capacity. Once segregated, Vandenberg proposes to apply advanced emission control technologies (<15 ppmvd NO_X @ 3% O_2) to those units capable of providing the greatest emission reduction. Also, Vandenberg proposes to apply somewhat less advanced emission control technologies (<30 ppmvd NO_X @ 3% O_2) to those units which provide fewer potential emission reductions. Finally, the units that operate the least are proposed to be tuned and/or modified to meet or exceed an emission standard of >30 ppmvd NO_X @3% O_2.

Advanced boiler emission control technologies available for these applications include lean pre-mix combustion techniques, integral flue gas recirculation burners, spark-ignited pulse combustion boilers, and oscillating gas control valves. Through the implementation of these technologies, Vandenberg will be

[4] See Attachment 3, ''Interim Agreement On Implementation Of The ENVVEST Title V Initiative.

[5] See Attachment 4, Santa Barbara County Air Pollution Control District Rule 1301, PART 70 OPERATING PERMITS—GENERAL INFORMATION.

[6] See Attachment 5, ''Project XL/ENVVEST PUBLIC PARTICIPATION PROCESS

demonstrating advanced emission reduction methods emerging into the marketplace for these sized units. Through the demonstration of these emerging technologies, Vandenberg will be advancing the technologies beyond the research and development phases and into the commercialization stages of burner development.

c. Pollution Prevention. Through the investigation and implementation of the advanced emission reduction technologies, Vandenberg will be demonstrating the effectiveness of pollution prevention methods for control of environmental pollution. Classic emission control strategies focus on the ability to capture and destroy pollution, once generated from industrial processes. These control techniques often relied on the use of scrubbing media or catalytic exhaust treatment (including ammonia injection) to achieve ultra-low emissions thresholds (<20 ppmvd NO_X @ 3% O_2).

Through the initiatives outlined in this FPA, Vandenberg is proposing to apply innovative pollution prevention techniques in reducing emissions from their facilities. Advanced burner development provides for the reduction of NO_X through alterations in the burner configuration, eliminating the need for post exhaust controls. By working directly with technology vendors, Vandenberg has the ability to apply advanced ultra-low emission technologies.

d. Emission Reductions. Vandenberg is committed to achieving through this initiative a reduction in annual emissions of ozone precursors by at least 10 tpy by 30 November 2002. These reductions, attained by the use of innovative technology, will be permanent and will not be used as bankable emission credits for further growth at Vandenberg or any other facility. Sources selected for the Vandenberg Air Quality Project XL/ENVVEST Initiative will not affect the calculation of the Vandenberg Net Emission Increase. This does not prohibit future Net Emission Increases at Vandenberg. However, if Vandenberg is required to undergo a mission change or additional missions are added to the facility and growth offsets are required to accommodate these mission changes, then such offsets must be obtained through projects which are not part of the air initiative, or must be acquired by the Air Force from qualified areas of sources outside Vandenberg.

5. Transferability, Feasibility, Monitoring, Reporting, and Evaluation

These criteria are addressed further in section III of this FPA.

a. Transferability. Transferability is envisioned in both a procedural and technical context. Procedurally, reallocating funding for pollution prevention rather than for compliance can result in regulatory requirements no longer being applicable. This funding trade off is a transferable mechanism. The technical transferability encompasses boiler demonstration projects testing new burner technologies that can be replicated at industrial and military facilities.

b. Feasibility. Feasibility, which is achievement of technical objectives within applicable cost constraints, is inherent within this process.

c. Monitoring And Reporting. Monitoring and Reporting relates to the collection of data necessary to proceed on to the next step which will validate the achievement of defined objectives. In this instance, adequate data regarding emissions reductions related to selected technology applications will be collected to allow for a meaningful evaluation of the progress being made to achieve specified milestones.

d. Evaluation. Evaluation will interpret the data gathered in the previous phase and make possible a determination of whether the appropriate milestone has been accomplished. This will involve a public participation component and should take place within 30 days of the completion date of any milestone.

6. Worker Safety and Environmental Justice

The base is committed to implementing Project XL/ENVVEST, complying with Executive Order 12898 and, pursuant to Executive Order 12196, complying with Air Force Office of Safety and Health standards. The Vandenberg Project XL/ENVVEST initiative will not create worker safety hazards or any disproportionately high and adverse human health or environmental effects on minority populations and low-income populations.

III. Implementation of the Vandenberg Initiative

A. Vandenberg Responsibilities; Emission Reductions

Vandenberg will implement a phased program to reduce annual emissions of ozone precursors by at least 10 tons by 30 November 2002. The initial effort will be accomplished through emission reductions from boilers, furnaces, or process heaters. Details of the program will be specified and made enforceable in the Rule 1301 Plan. The Plan shall consist of source selection criteria, technology options, baseline emission protocols, emission measurement protocols, and emission reduction reporting protocols. Vandenberg will work in conjunction with the District Innovative Technology Group. This Plan will be submitted to the Air Pollution Control Officer (''Control Officer'') no later than 30 November, 1997, to include and execute the following agreed upon milestones. Other emission reduction efforts, supporting the attainment of the 10 ton reduction goal, will be initiated for other sources, such as internal combustion engines and solvent and surface coating applications. Details of potential additional emission reduction efforts will be in the Plan. The Control Officer will approve, conditionally approve, or disapprove the Plan within 60 days of submittal.

The agreed upon milestones are as follows:

1. Within 30 days of execution of this Agreement, Vandenberg shall complete the initial assessment and cost feasibility study.
2. By 30 April 1999, 30 percent of candidate boilers identified in milestone #1 are being retrofitted.[7]
3. By 30 April 2000, 2 tons per year of emission reductions shall have been accomplished.
4. By 30 April 2001, 70 percent of candidate boilers identified in milestone #1 are being retrofitted.
5. By 30 November 2002, Vandenberg shall achieve a reduction in annual emissions of ozone precursors by 10 tons or more.

If any of the milestones are not met, this Agreement will terminate as provided in Section IV and Vandenberg will be required to comply with the requirements of Title V of the 1990 Clean Air Act Amendments, consistent with applicable rules and statutes. Compliance with milestones will be determined by the Control Officer and will be based upon data submitted by Vandenberg pursuant to agreed upon protocols. At the time of the execution of the FPA, the governing federal rule[8] requires a source to submit a compliant permit application within one year of the time at which the source becomes subject to the permit program.

B. District Responsibilities

1. Rule Submission to EPA

The District will submit to Region IX, for inclusion into the California State Implementation Plan (''SIP''), the relevant portions of District Rule 1301 which allow for the implementation of the Project XL/ENVVEST program.

[7] The term ''being retrofitted'' encompasses construction, testing, and monitoring of emission reductions.

[8] 40 CFR Part 70, § 70.5 (a)(1)(i).

2. Technical Assistance/Plan Review and Submission to EPA

The District will provide technical assistance to Vandenberg regarding opportunities for emission reductions at Vandenberg. Vandenberg may use such assistance when preparing the emission reduction Plan. The District will formally review the Plan that Vandenberg submits pursuant to Rule 1301 and approve the Plan if it meets the requirements of District rules. The District will submit to EPA for inclusion into the SIP the Vandenberg emission reduction Plan the Control Officer approves pursuant to Rule 1301.

C. EPA Responsibilities

EPA will review District Rule 370 and portions of Rule 1301 that allow for implementation of the Vandenberg Project XL/ENVVEST initiative for inclusion in the SIP, and approve those rules if the applicable statutory and regulatory criteria are met. EPA will also approve incorporation of amended District Rule 1301 into the District's Part 70 program if statutory and regulatory criteria are met.

D. EPA Approval of Rule 1301

All parties recognize and agree that until such time as District Rule 1301, as amended to implement this Agreement, is approved by EPA, the basis upon which the Control Officer intends to exercise his discretion to find Vandenberg a non-major source is not complete and Vandenberg is still subject to regulation under Title V. If EPA does not approve[9] the amended Rule 1301 as part of the District's Part 70 program by 1 January 1998 then this Agreement will terminate.

IV. Administration of the Agreement

A. Duration and Termination/Renewal of Agreement

This Agreement is effective until 30 November 2002. If, prior to expiration on 30 November, 2002, additional emission reduction opportunities are identified, the parties may elect to revise the reduction goals and extend the Agreement.

B. Termination

1. Parties' Termination Rights

Any party may terminate this Agreement any time prior to Control Officer's approval of the emission reduction Plan submitted to the District pursuant to Rule 1301. Such notice will be in writing and sent to the other parties. After such approval any party may terminate its participation in the Agreement by providing 30 days notice to the other parties. Termination of this Agreement will not terminate Vandenberg's obligations under District Rules 1301 and 370 as discussed in subsections IV.B.2 and IV.B.4 below.

2. Termination of Plan

If this Agreement is terminated, achieved emission reductions will remain in place in accordance with applicable rules. There will be no obligation to perform any unachieved reductions that have not been completed if any of the following events occur, and Vandenberg's status vis-á-vis Regulation XIII will be reassessed as set forth in Section IV–B above.

Vandenberg may withdraw from the approved plan if any of the following occur:

(a) It becomes subject to permit under Title V of the CAA as applied by federal, state, or local regulation.

(b) It does not achieve the emissions reductions required by Rule 1301 pursuant to the schedule of milestones included in the Plan approved by the District.

(c) USEPA does not approve the Plan for inclusion in the SIP within one year of approval by the District.

3. Stationary Source Redesignation

If the Plan is terminated in whole or in part for any reason, the Title V stationary source designation for Vandenberg will be reevaluated by EPA and the District consistent with applicable federal and state laws, rules, and regulations at the time of such termination or withdrawal of the plan. Such reevaluation will include all equipment on the facility. If such inclusion subjects Vandenberg to the permitting requirements of Regulation XIII, Vandenberg will apply for and obtain a permit in accordance with Regulation XIII and applicable federal regulations.

4. Achieved Emission Reductions

Notwithstanding any other provision in this Agreement, the portion of a Plan approved pursuant to Rule 1301 will not expire for any emission reductions that have been implemented or any equipment that has been or is being retrofitted. Such emission reductions will remain in effect and will be enforceable as part of the SIP and District Rules and Regulations.

C. Funding

Upon execution of the interim Agreement in June 1996, Vandenberg redirected all remaining Fiscal Year 1996 Title V compliance funds ($163,000) to implement program emission reduction projects. The Fiscal Year 1997 commitment is $465,000 for follow-on projects. At this time Vandenberg has requested, through the normal DOD budgeting process, funds for the following periods for Title V compliance purposes:

FY '98	$550,000
FY '99	500,000
FY '00	450,000
FY '01	400,000
Total	2,528,000

All funding commitments by Vandenberg will be in accordance with the Anti Deficiency Act (31 U.S.C. 1341).

Emission reduction projects will be funded from the funds estimated to be available in the totals identified above. Failure to achieve the milestones will result in these funds being withdrawn from this initiative and their utilization to comply with the requirements of Title V of the 1990 Clean Air Act Amendments. Costs attributable to complying with District Rule 370 will not be supported from those funds. All parties agree that administrative costs should be minimized to enhance the benefits of pursuing this initiative.

D. Events Preventing Implementation of Agreement

If at any time during implementation of this FPA, Vandenberg reasonably determines and EPA and the District concur that any requirement of such Agreement cannot be met due to circumstances beyond the control of Vandenberg (including, but not limited to, materially changed site conditions that could not reasonably have been anticipated, insufficient availability of appropriated funds or the significant failure of an innovative technology) EPA, District, and Vandenberg will attempt to negotiate mutually acceptable changes to the FPA.

E. Dispute Resolution

Any dispute that arises with respect to the meaning, application, implementation, interpretation, amendment, termination, or modification of the FPA, or with respect to the Vandenberg implementation of the FPA, the resolution of which is not expressly provided for in the FPA, will in the first instance, be the subject of informal negotiations, except with respect to Section IV.G. (Enforcement). To initiate informal negotiations, any signatory which believes it has a dispute with any other party will simultaneously notify all of the parties, in writing, setting forth the matter(s) in dispute. If the dispute cannot be resolved by the parties within 35 days

[9] Approval for this paragraph means a letter signed by EPA.

of receipt of such notice, then one or both parties may invoke non-binding mediation by setting forth the nature of the dispute, with a proposal for its resolution, in a letter and submit it to a three person dispute resolution committee consisting of one member designated by each party.

F. Public Records and the Administrative Record

Vandenberg will issue, within 30 days of execution of this Agreement, and every 6 months thereafter until completion of the Air Quality initiative, progress reports which document progress toward goals established by this Agreement. The reports will document equipment changes and replacements, process changes, and other relevant facts which support any assertions of actual emission reductions or the progress thereof. The reports will be provided to District, Region IX, and any interested party that requests such reports. In addition, Vandenberg shall maintain the reports in local public libraries. Vandenberg will also develop and maintain an Administrative Record of all formal documents, records, and correspondence necessary as a basis for decision making regarding this initiative.

G. Enforcement

While this Agreement is not legally binding, the requirements of District Rule 370, Potential to Emit—Limitations for Part 70 Sources; District Rule 1301, Part 70 Operating Permits, definition of ''Stationary Source''; and the Vandenberg emission reduction Plan approved by the Control Officer,[10] are binding and legally enforceable by the District, after all rule changes are final. Upon EPA approval of these requirements into the SIP, they will also be enforceable by EPA and citizens under the Clean Air Act. District and federal enforceability of the above provisions will remain in effect until such provisions are modified or rescinded by the District and approved by EPA.

These enforcement measures make Vandenberg accountable for achieving the milestones set out in this FPA and the Plan submitted pursuant to Rule 1301.

H. Periodic Review and Evaluation Activities

Each party will review this Agreement, pursuant to the above mentioned milestones in Section III.A. The review will be an evaluation of the progress towards achieving the objectives of this Agreement.

I. Means of Giving Notice

When giving notice with regard to FPA modification or termination, the parties will contact the FPA signatories in writing. Informal communication may be given by phone or in writing to the following contact offices:

Environmental Management Office, (805) 734–8232 (x–61921), Vandenberg Air Force Base

Office of Strategic Planning and Emerging Issues, (415) 744–2390, U.S. Environmental Protection Agency, Region IX

Manager of Major Source Division, (805) 961–8800, Santa Barbara County Air Pollution Control District

J. Effective Date

This Agreement is effective upon the date of the last signature by the parties.

Felicia Marcus,

Regional Administrator, United States Environmental Protection Agency, Region IX.

C. Robert Kehler,

Colonel, USAF, Commander, 30th Space Wing, Vandenberg Air Force Base.

Douglas W. Allard,

Air Pollution Control Officer, Santa Barbara County Air Pollution Control District.

List of Attachments

1. Memorandum Of Agreement Between The Department Of Defense And The U.S. Environmental Protection Agency On Regulatory Reinvention Pilot Projects.
2. Santa Barbara County Air Pollution Control District Rule 370, Potential To Emit, Limitations For Part 70 Sources.
3. Interim Agreement On The Implementation Of The Project XL/Envvest ''Title V'' Initiative.
4. Santa Barbara County Air Pollution Control District Rule 1301, Part 70 Operating Permits—General Information.
5. Public Participation Process.
6. Rule 1301 Plan (Will Be Appended To FPA Upon Approval By The Control Officer).

[FR Doc. 97–23692 Filed 9–5–97; 8:45 am]

BILLING CODE 6560–50–U

[10] Upon approval by the Control Officer, the Plan will be appended to this Agreement as Attachment 6.

federal register

Monday
September 8, 1997

Part VIII

Department of Housing and Urban Development

24 CFR Chapter V

HUD Disaster Recovery Initiative; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Chapter V

[Docket No. FR–4254–N–01]

HUD Disaster Recovery Initiative

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice of disaster recovery funds availability and waivers.

SUMMARY: The 1997 Emergency Supplemental Appropriations Act for Recovery from Natural Disasters, with respect to the HUD Disaster Recovery Initiative grant funds, requires the publication of a Notice governing the use of such funds in conjunction with any program administered by the Federal Emergency Management Agency (FEMA) for buyouts of structures in disaster areas. This Notice addresses that requirement and provides other guidance on the use of those funds.

EFFECTIVE DATE: June 12, 1997.

FOR FURTHER INFORMATION CONTACT: Jan C. Opper, Senior Program Officer, Office of Block Grant Assistance, Department of Housing and Urban Development, Room 7286, 451 Seventh Street, SW., Washington, DC 20410, telephone number (202) 708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. FAX inquiries may be sent to Mr. Opper at (202) 401–2044. (Except for the ''800'' number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Empowering Communities for Recovery

A. Purpose

1. This Notice describes policies and procedures applicable to the HUD Disaster Recovery Initiative.

2. When a community is hit hard by a natural disaster, there is often a long, difficult process of recovery. Most impacted areas never fully recover because of limited resources. HUD is uniquely positioned to assist States and communities with disaster recovery, because of its mission and experience as the Federal Government's agency for addressing a broad spectrum of needs related to community viability (e.g., housing, economic and community development).

3. HUD's Disaster Recovery Initiative helps communities impacted by disasters receiving Presidential declarations. When other agencies cannot assist, HUD steps in with gap funding for recovery activities—providing the glue that holds together the sometimes disconnected pieces of disaster recovery. Because Federal government resources will never be sufficient to cover costs of total recovery, HUD's program requires a partnership of Federal, State and local governments, the business community and citizens.

4. HUD Disaster Recovery funds are intended to support the activities of other Federal agencies and cannot be used for activities reimbursable or for which funds are made available by the Federal Emergency Management Agency (FEMA), the Small Business Administration (SBA), or the U.S. Army Corps of Engineers (USACE).

B. Benefiting Persons of Low and Moderate Income

1. An objective of the program is the redevelopment of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, especially for persons of low and moderate income.

2. A grantee must use at least 50 percent of its HUD Disaster Recovery funds for activities that benefit persons of low and moderate income. The Secretary may waive this requirement only on a case-by-case basis. HUD will consider such a waiver after receiving a request from a grantee that includes a justification that establishes good cause for the waiver and reflects a public purpose.

C. Definitions

Regulatory references are in title 24 of the Code of Federal Regulations (CFR), unless otherwise cited.

Act means Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*).

Buildings for the general conduct of government means city halls, county administrative buildings, State capitol or office buildings or other facilities in which the legislative, judicial or general administrative affairs of the government are conducted. Such term does not include such facilities as neighborhood service centers or special purpose buildings located in low and moderate income areas that house various nonlegislative functions or services provided by government at decentralized locations.

Chief Executive Officer of a State or unit of general local government means the elected official or the legally designated official, who has the primary responsibility for the conduct of that entity's governmental affairs. Examples of the ''chief executive officer'' of a unit of general local government are: the elected mayor of a municipality; the elected county executive of a county; the chairperson of a county commission or board in a county that has no elected county executive; and the official designated pursuant to law by the governing body of a unit of general local government.

City means the following:

a. Any unit of general local government that is classified as a municipality by the United States Bureau of the Census, or

b. Any other unit of general local government that is a town or township and that, in the determination of the Secretary:

i. Possesses powers and performs functions comparable to those associated with municipalities;

ii. Is closely settled; and

iii. Contains within its boundaries no incorporated places as defined by the United States Bureau of the Census that have not entered into cooperation agreements with the town or township for a period covering at least 3 years to undertake or assist in the undertaking of essential community development and housing assistance activities. The determination of eligibility of a town or township to qualify as a city will be based on information available from the United States Bureau of the Census and information provided by the town or township and its included units of general local government.

Grantee means:

a. A City that receives no less than $200,000 under the disaster formula allocation, has the capacity to carry out this program, and remaining disaster recovery needs; or that is in a State in which HUD administers its community development program.

b. A County that receives no less than $200,000 under the disaster formula allocation, has the capacity to carry out this program, and remaining disaster recovery needs; or that is in a State in which HUD administers its community development program. The county may designate a local government or governments to carry out the program on its behalf.

c. A State government that receives a HUD Disaster Recovery grant allocation that includes funds calculated for places that would have received an allocation below the minimum grant size.

Household means all the persons who occupy a housing unit. The occupants may be a single family, one person living alone, two or more families living together, or any other group of related or unrelated persons who share living arrangements.

HUD means the Department of Housing and Urban Development.

Income. For the purpose of city and county grantees determining whether a family or household is low- and moderate-income, grantees may select any of the three definitions listed below for each activity, except that integrally related activities of the same type and qualifying under the same paragraph of § 570.208(a) shall use the same definition of income. The option to choose a definition does not apply to activities that qualify under § 570.208(a)(1) (Area benefit activities), except when the recipient carries out a survey under § 570.208(a)(1)(vi). Activities qualifying under § 570.208(a)(1) generally must use the area income data supplied to recipients by HUD.

a. The three definitions are as follows:

i. *Annual income* as defined under the Section 8 Housing Assistance Payments program at § 813.106 (except that if the HUD Disaster Recovery Initiative assistance being provided is homeowner rehabilitation, the value of the homeowner's primary residence may be excluded from any calculation of Net Family Assets); or

ii. Annual Income as reported under the Census long-form for the most recent available decennial Census. This definition includes:

(1) Wages, salaries, tips, commissions, etc.;

(2) Self-employment income from own non-farm business, including proprietorships and partnerships;

(3) Farm self-employment income;

(4) Interest, dividends, net rental income, or income from estates or trusts;

(5) Social Security or railroad retirement;

(6) Supplemental Security Income, Aid to Families with Dependent Children, or other public assistance or public welfare programs;

(7) Retirement, survivor, or disability pensions; and

(8) Any other sources of income received regularly, including Veterans' (VA) payments, unemployment compensation, and alimony; or

iii. Adjusted gross income as defined for purposes of reporting under Internal Revenue Service (IRS) Form 1040 for individual Federal annual income tax purposes.

b. Estimate the annual income of a family or household by projecting the prevailing rate of income of each person at the time assistance is provided for the individual, family, or household (as applicable). Estimated annual income shall include income from all family or household members, as applicable. Income or asset enhancement derived from the HUD Disaster Recovery grant-assisted activity shall not be considered in calculating estimated annual income.

Indian tribe means any Indian tribe, band, group, and nation, including Alaska Indians, Aleuts, and Eskimos and any Alaska Native Village, of the United States that is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638) or under the State and Local Fiscal Assistance Act of 1972 (Pub. L. 92–512).

Low- and moderate-income household means a household having an income equal to or less than the Section 8 low-income limit established by HUD.

Low- and moderate-income person means a member of a family having an income equal to or less than the Section 8 low-income limit established by HUD. Unrelated individuals will be considered as one-person families for this purpose.

Low-income household means a household having an income equal to or less than the Section 8 very low-income limit established by HUD.

Low-income person means a member of a family that has an income equal to or less than the Section 8 very low-income limit established by HUD. Unrelated individuals shall be considered as one-person families for this purpose.

Moderate-income household means a household having an income equal to or less than the Section 8 low-income limit and greater than the Section 8 very low-income limit, established by HUD.

Moderate-income person means a member of a family that has an income equal to or less than the Section 8 low-income limit and greater than the Section 8 very low-income limit, established by HUD. Unrelated individuals shall be considered as one-person families for this purpose.

Secretary means the Secretary of Housing and Urban Development.

Small business means a business that meets the criteria set forth in section 3(a) of the Small Business Act (15 U.S.C. 631, 636, 637).

State means any State of the United States, or an instrumentality thereof approved by the Governor; and the Commonwealth of Puerto Rico.

Unit of general local government means any city, county, town, township, parish, village or other general purpose political subdivision of a State; Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa or a general purpose political subdivision thereof; a combination of such political subdivisions recognized by the Secretary; and the District of Columbia.

D. Allocation of Funds

1. $500 million has been appropriated for the HUD Disaster Recovery Initiative under Title II, Chapter 10 of the 1997 Emergency Supplemental Appropriations Act for Recovery from Natural Disasters (Pub. L. 105–18; approved June 12, 1997) (the 1997 Supplemental Appropriations Act).

2. HUD will generally allocate funds to grantees based on a formula that reflects disaster recovery needs that are not met by other Federal programs provided that the grantee has the capacity to carry out this program, and on remaining needs.

E. Submission Requirements

1. Prerequisites to a grantee's receipt of a HUD Disaster Recovery grant include a citizen participation plan; publication of Plan proposals by grantees; notice and comment; and submission of an Action Plan for Disaster Recovery.

2. Each city or county grantee must submit to HUD, for approval, an Action Plan for Disaster Recovery that describes:

a. The recovery needs resulting from the covered disaster;

b. The grantee's overall plan for recovery;

c. Expected Federal, non-Federal public, and private resources, and their relationship, if any, to activities to be funded with HUD Disaster Recovery funds;

d. The projected uses for the HUD Disaster Recovery funds; and

e. In the case of a new HUD grantee, it should describe how expenditure of its funds fits within a current local or State recovery plan.

3. The city or county grantee must describe monitoring standards and procedures pursuant to § 91.230 and include certifications pursuant to:

a. § 91.225(a)(1), affirmatively furthering fair housing;

b. § 91.225(a)(3), drug-free workplace;

c. § 91.225(a)(4), anti-lobbying;

d. § 91.225(a)(7), acquisition and relocation, except as waived;

e. § 91.225(b)(1), citizen participation, except as waived;

f. § 91.225(b)(5), excessive force;

g. § 91.225(b)(6), compliance with anti-discrimination laws;

h. § 91.225(b)(7), compliance with lead-based paint procedures; and

i. § 91.225(b)(8), compliance with applicable laws.

4. Each State grantee must submit to HUD, for approval, an Action Plan for Disaster Recovery that describes:

a. The recovery needs resulting from the covered disaster;

b. The grantee's overall plan for recovery;

c. Expected Federal, non-Federal public, and private resources, and their relationship, if any, to activities to be funded with HUD Disaster Recovery funds; and

d. The State's method of distribution.

5. A State grantee may distribute HUD Disaster Recovery funds to units of general local government, including city and county grantees that otherwise receive HUD Disaster Recovery funds, and to Indian tribes.

6. The State grantee must describe monitoring standards and procedures pursuant to § 91.330 and include certifications pursuant to:

a. § 91.325(a)(1), affirmatively furthering fair housing;

b. § 91.325(a)(3), drug-free workplace;

c. § 91.325(a)(4), anti-lobbying;

d. § 91.325(a)(5), authority of the State to carry out the program;

e. § 91.325(a)(7), acquisition and relocation, except as waived;

f. § 91.325(b)(1), citizen participation, except as waived;

g. § 91.325(b)(2), consultation with local governments;

h. § 91.325(b)(5), compliance with antidiscrimination laws;

i. § 91.325(b)(6), excessive force;

j. § 91.325(b)(7), compliance with applicable laws.

7. Citizen participation

a. In order to permit public examination and appraisal of the Action Plan for Disaster Recovery, to enhance the public accountability of grantees, and to facilitate coordination of activities with different levels of government, the grantee (or unit of general local government receiving a grant from a State) shall in a timely manner—

i. Furnish citizens or, as appropriate, units of general local government information concerning the amount of funds available for proposed HUD Disaster Recovery grant activities and the range of activities that may be undertaken, including the estimated amount proposed to be used for activities that will benefit persons of low and moderate income;

ii. Publish a proposed Action Plan for Disaster Recovery in such manner to afford affected citizens or, as appropriate, units of general local government an opportunity to examine its content and to submit comments on the proposed disaster recovery performance and on the community development performance of the grantee; and

iii. Provide citizens or, as appropriate, units of general local government with reasonable notice of, and opportunity to comment on, any substantial change proposed to be made in the use of funds received under this grant from one eligible activity to another or in the method of distribution of such funds.

In preparing the Action Plan for Disaster Recovery, the grantee shall consider any such comments and views and may, if deemed appropriate by the grantee, modify the proposed Action Plan for Disaster Recovery. The Action Plan for Disaster Recovery shall be made available to the public, and a copy shall be furnished to the Secretary together with the certifications required under sections 3. and 5. above. Any Action Plan for Disaster Recovery may be modified or amended from time to time by the grantee in accordance with the same procedures required in this paragraph for the preparation and submission of such Action Plan for Disaster Recovery.

b. A HUD Disaster Recovery grant may be made only if the grantee certifies that it is following a detailed citizen participation plan that:

i. Provides for and encourages citizen participation, with particular emphasis on areas in which HUD Disaster Recovery funds are proposed to be used;

ii. Provides citizens with information and records relating to the grantee's proposed use of funds, and relating to the actual use of HUD Disaster Recovery funds; and

iii. Identifies how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of non-English speaking residents can be reasonably expected to participate.

This paragraph may not be construed to restrict the responsibility or authority of the grantee for the development and execution of its HUD Disaster Recovery Initiative.

F. Eligible Activities

1. Grantees may not use HUD Disaster Recovery funds for activities reimbursable or for which funds are made available by the Federal Emergency Management Agency (FEMA), the Small Business Administration (SBA), or the U.S. Army Corps of Engineers (USACE).

2. Disaster Recovery funds may be used for activities that are relevant to disaster recovery, as described in this Notice. Grantees must use funds appropriated under Title II, Chapter 10 of the 1997 Emergency Supplemental Appropriations Act for Recovery from Natural Disasters (Pub. L. 105–18) for buyouts, relocation, long-term recovery, and mitigation related to a covered disaster. These funds will supplement, not replace, Federal Emergency Management Agency (FEMA) and other Federal funds. Those activities include:

a. Acquisition of real property (including the buying out of properties in a flood plain and the acquisition of relocation property);

b. Relocation payments and assistance for displaced persons, businesses, organizations, and farm operations;

c. Debris removal, clearance, and demolition;

d. Rehabilitation or reconstruction of residential and non-residential structures;

e. Acquisition, construction, reconstruction, or installation of public facilities and improvements, such as water and sewer facilities, streets, neighborhood centers, and the conversion of school buildings for eligible purposes;

f. Code enforcement in deteriorated or deteriorating areas, e.g., disaster areas;

g. Assistance to facilitate homeownership among low and moderate income persons, e.g., downpayment assistance, interest rate subsidies, loan guarantees;

h. Provision of public services, limiting costs to no more than 25 percent of the grant amount;

i. Activities relating to energy conservation and renewable energy resources, incorporated into recovery;

j. Provision of assistance to profit-motivated businesses to carry out economic development or recovery activities that benefit the public through job creation/retention; and

k. Planning and administration costs up to 20 percent of the grant (e.g., planning, urban environmental design and policy-planning-management-capacity building activities and payment of reasonable program administration costs for: general management, oversight and coordination; public information; fair housing activities; indirect costs charged to the HUD Disaster Recovery Initiative under a cost allocation plan prepared in accordance with OMB Circulars A–21, A–87, or A–122 as applicable; and submission of applications for Federal programs; as well as,

l. Acquisition, construction, or reconstruction of buildings for the general conduct of government damaged or destroyed as a direct result of a Presidentially declared disaster; and

m. Construction of new replacement housing by units of general local government damaged or destroyed as a direct result of a Presidentially declared disaster.

3. *Determination of eligibility.* An activity may be assisted in whole or in part with HUD Disaster Recovery funds

only if all of the following requirements are met:

a. *Compliance with section F.* Each activity must meet the eligibility requirements of section F of this notice.

b. *Compliance with national objectives.* Grant recipients under the HUD Disaster Recovery Initiative must certify that their projected use of funds has been developed so as to give maximum feasible priority to activities that will carry out one of the national objectives of benefit to low- and moderate-income families or aid in the prevention or elimination of slums or blight; the projected use of funds may also include activities that the recipient certifies are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs. Consistent with the foregoing, each recipient must ensure, and maintain evidence, that each of its activities assisted with HUD Disaster Recovery funds meets one of the three national objectives as contained in its certification. Criteria for determining whether an activity addresses one or more of these objectives are contained at § 570.208.

c. *Compliance with the primary objective.* The primary objective of the HUD Disaster Recovery Initiative is the redevelopment of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, especially for persons of low and moderate income. In determining the percentage of funds expended for such activities:

i. Costs of administration and planning eligible under section F.1. of this notice will be assumed to benefit low- and moderate-income persons in the same proportion as the remainder of the HUD Disaster Recovery funds and, accordingly, shall be excluded from the calculation;

ii. Funds expended for the acquisition, new construction or rehabilitation of property for housing that qualifies under § 570.208(a)(3) must be counted for this purpose but shall be limited to an amount determined by multiplying the total cost (including HUD Disaster Recovery grant and non-HUD Disaster Recovery grant costs) of the acquisition, construction or rehabilitation by the percent of units in such housing to be occupied by low- and moderate-income persons.

iii. Funds expended for any other activities qualifying under § 570.208(a) must be counted for this purpose in their entirety.

d. *Compliance with environmental review procedures.* The environmental review procedures set forth at 24 CFR part 58 must be completed for each activity (or project as defined in 24 CFR part 58), as applicable.

4. *Special policies governing facilities.* The following special policies apply to:

a. *Facilities containing both eligible and ineligible uses.* A public facility otherwise eligible for assistance under the HUD Disaster Recovery Initiative may be provided with HUD Disaster Recovery funds even if it is part of a multiple use building containing ineligible uses, if:

i. The facility that is otherwise eligible and proposed for assistance will occupy a designated and discrete area within the larger facility; and

ii. The recipient can determine the costs attributable to the facility proposed for assistance as separate and distinct from the overall costs of the multiple-use building and/or facility.

Allowable costs are limited to those attributable to the eligible portion of the building or facility.

b. *Fees for use of facilities.* Reasonable fees may be charged for the use of the facilities assisted with HUD Disaster Recovery funds, but charges such as excessive membership fees, which will have the effect of precluding low- and moderate-income persons from using the facilities, are not permitted.

5. *Special assessments under the HUD Disaster Recovery Initiative.* The following policies relate to special assessments under the HUD Disaster Recovery Initiative:

a. *Definition of special assessment.* The term ''special assessment'' means the recovery of the capital costs of a public improvement, such as streets, water or sewer lines, curbs, and gutters, through a fee or charge levied or filed as a lien against a parcel of real estate as a direct result of benefit derived from the installation of a public improvement, or a one-time charge made as a condition of access to a public improvement. This term does not relate to taxes, or the establishment of the value of real estate for the purpose of levying real estate, property, or ad valorem taxes, and does not include periodic charges based on the use of a public improvement, such as water or sewer user charges, even if such charges include the recovery of all or some portion of the capital costs of the public improvement.

b. *Special assessments to recover capital costs.* Where HUD Disaster Recovery funds are used to pay all or part of the cost of a public improvement, special assessments may be imposed as follows:

i. Special assessments to recover the HUD Disaster Recovery funds may be made only against properties owned and occupied by persons not of low and moderate income. Such assessments constitute program income.

ii. Special assessments to recover the non-HUD Disaster Recovery grant portion may be made provided that HUD Disaster Recovery funds are used to pay the special assessment in behalf of all properties owned and occupied by low and moderate income persons; except that HUD Disaster Recovery funds need not be used to pay the special assessments in behalf of properties owned and occupied by moderate-income persons if the grant recipient certifies that it does not have sufficient HUD Disaster Recovery funds to pay the assessments in behalf of all of the low- and moderate-income owner-occupant persons. Funds collected through such special assessments are not program income.

c. *Public improvements not initially assisted with HUD Disaster Recovery funds.* The payment of special assessments with HUD Disaster Recovery funds constitutes HUD Disaster Recovery assistance to the public improvement. Therefore, HUD Disaster Recovery funds may be used to pay special assessments provided:

i. The installation of the public improvements was carried out in compliance with requirements applicable to activities assisted under this initiative, including environmental, citizen participation, and Davis-Bacon requirements;

ii. The installation of the public improvement meets a criterion for national objectives in § 570.208 (a)(1), (b), or (c); and

iii. The requirements of § 570.200(c)(2)(ii) are met.

6. *Limitation on planning and administrative costs.*

a. No more than 20 percent of the sum of any grant, plus program income, shall be expended for planning and program administrative costs, paragraph F.1.k. HUD will consider requests for waiver and modification of this limitation under extraordinary disaster recovery circumstances on a case-by-case basis.

b. State administrative costs. The State is responsible for the administration of its HUD Disaster Recovery Initiative. The amount of HUD Disaster Recovery funds used to pay administrative costs incurred by the State in carrying out its responsibilities under this program shall not exceed 2 percent of the aggregate of the State's grant.

7. *Reimbursement for pre-award costs.* The effective date of the grant agreement is the program year start date.

a. Prior to the effective date of the grant agreement, a recipient may incur costs beginning on or after the incident date of the Presidentially declared disaster, and then after the effective date of the grant agreement pay for those costs using its HUD Disaster Recovery funds, provided that for city and county grantees:

i. The activity for which the costs are being incurred is included in its Action Plan for Disaster Recovery prior to the costs being paid;

ii. Citizens are advised of the extent to which these pre-award costs will affect the HUD Disaster Recovery funds;

iii. The costs and activities funded are in compliance with the requirements of this initiative and with the Environmental Review Procedures stated in 24 CFR part 58;

iv. HUD Disaster Recovery grant payments for pre-award costs will be made during a time no longer than the next 24 months following the effective date of the grant agreement or amendment in which the activity is first included; and

v. The total amount of pre-award costs to be paid during any program year pursuant to this provision is no more than the greater of 25 percent of the amount of the grant made for that year or $300,000.

b. Upon the written request of the recipient, HUD may authorize payment of pre-award costs for activities that do not meet the criteria at paragraphs 7.a.iv or 7.a.v. of this section, if HUD determines, in writing, that there is good cause for granting an exception upon consideration of the following factors, as applicable:

i. Whether granting the authority would result in a significant contribution to the goals and purposes of the HUD Disaster Recovery Initiative;

ii. Whether failure to grant the authority would result in undue hardship to the recipient or beneficiaries of the activity;

iii. Whether granting the authority would not result in a violation of a statutory provision;

iv. Whether circumstances are clearly beyond the recipient's control; or

v. Any other relevant considerations.

8. *Activities outside the jurisdiction of the unit of general local government.* HUD Disaster Recovery funds may assist an activity located outside the jurisdiction of the unit of general local government that receives the HUD Disaster Recovery funds, provided the unit of general local government determines that the activity is meeting its disaster recovery needs and reasonable benefits accrue to residents of the jurisdiction.

G. Guidelines for Evaluating and Selecting Economic Development Projects

HUD provides guidelines to assist the recipient to evaluate and select activities to be carried out for economic development purposes. These guidelines are composed of two components: guidelines for evaluating project costs and financial requirements; and standards for evaluating public benefit. The standards for evaluating public benefit are mandatory, but the guidelines for evaluating projects costs and financial requirements are not. They may be found at § 570.482 (e) and (f) for States and at § 570.209 for cities and counties. HUD may consider the waiver of such standards on a case-by-case basis upon submission of a written justification as to why the recipient cannot meet the requirement and a proposed alternative that assures at least a minimum level of public benefit.

H. Ineligible Activities

1. *General government expenses.* Except as otherwise specifically authorized in this Notice, or under OMB Circular A–87, expenses required to carry out the regular responsibilities of the unit of general local government are not eligible for assistance.

2. The following activities may not be assisted with HUD Disaster Recovery funds unless authorized under provisions of section 105(a)(15) of the Act.

a. *Purchase of equipment.* The purchase of equipment with HUD Disaster Recovery funds is generally ineligible.

i. *Construction equipment.* The purchase of construction equipment is ineligible, but compensation for the use of such equipment through leasing, depreciation, or use allowances pursuant to OMB Circulars A–21, A–87 or A–122 as applicable for an otherwise eligible activity is an eligible use of HUD Disaster Recovery funds. However, the purchase of construction equipment for use as part of a solid waste disposal facility is eligible.

ii. *Fire protection equipment.* Fire protection equipment is considered for this purpose to be an integral part of a public facility and thus, purchase of such equipment would be eligible.

iii. *Furnishings and personal property.* The purchase of equipment, fixtures, motor vehicles, furnishings, or other personal property not an integral structural fixture is generally ineligible. HUD Disaster Recovery funds may be used, however, to purchase or to pay depreciation or use allowances (in accordance with OMB Circulars A–21, A–87 or A–122, as applicable) for such items when necessary for use by a recipient or its subrecipients in the administration of activities assisted with HUD Disaster Recovery funds, or when eligible as fire fighting equipment, or when such items constitute all or part of a public service.

b. *Operating and maintenance expenses.* The general rule is that any expense associated with repairing, operating or maintaining public facilities, improvements and services is ineligible. Specific exceptions to this general rule are operating and maintenance expenses associated with public service activities, interim assistance, and office space for program staff employed in carrying out the HUD Disaster Recovery Initiative. For example, the use of HUD Disaster Recovery funds to pay the allocable costs of operating and maintaining a facility used in providing a public service would be eligible, even if no other costs of providing such a service are assisted with such funds. Examples of ineligible operating and maintenance expenses are:

i. Maintenance and repair of publicly owned streets, parks, playgrounds, water and sewer facilities, neighborhood facilities, senior centers, centers for persons with disabilities, parking and other public facilities and improvements. Examples of maintenance and repair activities for which HUD Disaster Recovery funds may not be used include the filling of pot holes in streets, repairing of cracks in sidewalks, the mowing of recreational areas, and the replacement of expended street light bulbs; and

ii. Payment of salaries for staff, utility costs and similar expenses necessary for the operation of public works and facilities.

c. *Income payments.* The general rule is that HUD Disaster Recovery funds may not be used for income payments. For purposes of the HUD Disaster Recovery Initiative, ''income payments'' means a series of subsistence-type grant payments made to an individual or family for items such as food, clothing, housing (rent or mortgage), or utilities, but excludes emergency grant payments made over a period of up to three consecutive months to the provider of such items or services on behalf of an individual or family. HUD may consider a waiver request for exceptional circumstances on a case-by-case basis.

I. Criteria for National Objectives

The criteria at § 570.483 and § 570.208 shall be used for States and for cities and counties, respectively, to determine whether a HUD Disaster Recovery Initiative-assisted activity complies with one or more of the national objectives.

J. Treatment of Program Income

For cities and counties, program income generated by HUD Disaster Recovery Initiative becomes program income to the grantee's CDBG program, not to its HUD Disaster Recovery grant. (For new grantees, not participating in the CDBG program, program income is governed by the provisions of § 570.426). Therefore, any program income generated by HUD Disaster Recovery funds is to be included in cost cap calculations and program requirements for use of the CDBG funds. However, for States, the program income shall be returned to the State as program income for the year in which the State redistributes those funds.

K. Acquisition (Buyouts) of Flood-Damaged Properties

1. *Payment of Pre-flood Values for Buyouts.* HUD Disaster Recovery Initiative grantees have the discretion to pay pre-flood or post-flood values for the acquisition of properties located in a flood way or flood plain. In using HUD Disaster Recovery funds for such acquisitions, the grantee must uniformly apply whichever valuation method it chooses.

2. *Duplication of Benefits and Optional Relocation Payments with Buyouts.* a. Optional relocation assistance should only be provided to the extent necessary for displaced persons to relocate in a ''comparable replacement dwelling,'' as defined in 42 U.S.C. 4601(10) and 49 CFR 24.2(d), except as provided by HUD with prior approval on a case by case basis when sufficient cause exists due to extraordinary erosive economic impact of relocation, and shall not exceed the difference between the housing replacement cost and the sum of:

i. The net proceeds from any flood insurance payment (proceeds net of the cost of documented repairs of flood damage),

ii. Personal tax savings that result from an owner's tax deduction of capital loss on displacement property,

iii. FEMA Hazard Mitigation Grant Program acquisition proceeds, and

iv. SBA disaster loan assistance.

3. *Buyout of Undamaged Properties.* a. Many buyout projects contain some properties that were undamaged by the floods. Local administrators sometimes seek to offer buyouts to owners of undamaged properties to maximize clearance of the floodplain. Purchase of such properties with HUD Disaster Recovery funding is permitted if the properties are incidental to the project as a whole.

4. *Ownership and Maintenance of Acquired Property.* a. Any property acquired with HUD Disaster Recovery funds being used to match FEMA Section 404 Hazard Mitigation Grant Program funds is subject to section 404(b)(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, which requires that such property will be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices. In addition, with minor exceptions, no new structure may be erected on the property and no subsequent application for Federal disaster assistance may be made for any purpose. The acquiring entity may want to lease such property to adjacent property owners or other parties for compatible uses in return for a maintenance agreement. Although Federal policy encourages leasing rather than selling such property, the property may be sold. In all cases, a deed restriction must require that the property be dedicated and maintained for compatible uses in perpetuity.

5. *Future Federal Assistance to Owners Remaining in Floodplain.*

a. Section 582 of the National Flood Insurance Reform Act of 1994 (in Title V of Pub. L. 103–325) (42 U.S.C. 5154a) prohibits flood disaster assistance in certain circumstances. In general, it provides that no Federal disaster relief assistance made available in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property, if that person at any time has received flood disaster assistance that was conditional on the person first having obtained flood insurance under applicable Federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable Federal law on such property. (Section 582 is self-implementing without regulations.) This means that a grantee may not provide disaster assistance for the above-mentioned repair, replacement, or restoration to a person that has failed to meet this requirement.

b. Section 582 also implies a responsibility for a grantee that receives HUD Disaster Recovery funds or that, under section 122 of the Act, designates annually appropriated CDBG funds for disaster recovery. That responsibility is to inform property owners receiving disaster assistance that triggers the flood insurance purchase requirement that they have a statutory responsibility to notify any transferee of the requirement to obtain and maintain flood insurance, and that the transferring owner may be liable if he or she fails to do so. These requirements are described below.

c. *Duty To Notify.* In the event of the transfer of any property described in paragraph e, the transferor shall, not later than the date on which such transfer occurs, notify the transferee in writing of the requirements to:

i. Obtain flood insurance in accordance with applicable Federal law with respect to such property, if the property is not so insured as of the date on which the property is transferred; and

ii. Maintain flood insurance in accordance with applicable Federal law with respect to such property.

Such written notification shall be contained in documents evidencing the transfer of ownership of the property.

d. *Failure To Notify.* If a transferor fails to make notification and, subsequent to the transfer of the property:

i. The transferee fails to obtain or maintain flood insurance, in accordance with applicable Federal law, with respect to the property;

ii. The property is damaged by a flood disaster; and

iii. Federal disaster relief assistance is provided for the repair, replacement, or restoration of the property as a result of such damage,

the transferor must reimburse the Federal Government in an amount equal to the amount of the Federal disaster relief assistance provided with respect to the property.

e. The notification requirements apply to personal, commercial, or residential property for which Federal disaster relief assistance made available in a flood disaster area has been provided, prior to the date on which the property is transferred, for repair, replacement, or restoration of the property, if such assistance was conditioned upon obtaining flood insurance in accordance with applicable Federal law with respect to such property.

f. The term ''Federal disaster relief assistance'' applies to HUD or other Federal assistance for disaster relief in ''flood disaster areas.'' This prohibition applies only to when the new disaster relief assistance was given for a loss caused by flooding. It does not apply to disaster assistance caused by other sources (i.e., earthquakes, fire, wind,

etc.). The term ''flood disaster area'' is defined in section 582(d)(2) to mean an area receiving a Presidential declaration of a major disaster or emergency as a result of flood conditions.

L. Other Program Requirements

1. *General.* This section L. enumerates laws that the Secretary will treat as applicable to the HUD Disaster Recovery Initiative grants to cities and counties, including statutes expressly made applicable by the Act and certain other statutes and Executive Orders for which the Secretary has enforcement responsibility. The absence of mention herein of any other statute for which the Secretary does not have direct enforcement responsibility is not intended to be taken as an indication that, in the Secretary's opinion, such statute or Executive Order is not applicable to activities assisted under the Act. States are governed by applicable laws.

2. *Labor standards.*

In part because Davis-Bacon requirements are not applicable to Federal Emergency Management Agency (FEMA) disaster grants, it is necessary to clarify the applicability of Davis-Bacon requirements in relationship to the use of HUD Disaster Recovery funds in disaster recovery efforts. This section of this Notice addresses Davis-Bacon applicability to use of HUD Disaster Recovery funds to reimburse property owners for construction work either completed or in process at the time use of those funds is contemplated.

In accordance with Section 110(a) of the Act, construction work financed in whole or in part with HUD Disaster Recovery funds is subject to Federal labor standards provisions including the payment of Davis-Bacon Act prevailing wage rates. Additionally, such work is subject to the requirements of the Copeland Act governing the certification and submission of weekly payroll reports and prohibiting kick-backs and other impermissible deductions from wages, and the overtime requirements of the Contract Work Hours and Safety Standards Act. The requirements found in Department of Labor (DOL) regulations for Davis-Bacon administration and enforcement (29 CFR parts 1, 3, 5, 6, and 7) also apply.

a. *Applicability.* HUD Disaster Recovery activities are subject to program policies and parameters for Federal labor standards applicability at § 570.603. The labor provisions apply to rehabilitation of residential property only if such property contains 8 or more units.

b. *Volunteers.* Section 110(b) of the Act provides for the use of volunteer labor on construction work subject to Federal labor standards. Volunteers may be utilized to the extent permitted under the regulations in 24 CFR part 70.

c. *Work in progress.* In accordance with 29 CFR 1.6(g), if HUD Disaster Recovery funds are approved after start of construction (e.g., rehabilitation), Davis-Bacon requirements apply to the construction work. In such cases, the appropriate Davis-Bacon wage decision and contract standards must be incorporated into the contract specifications retroactively to the date of award or start of construction, whichever was first. However, HUD may request and the DOL may approve a wage determination effective on the date the Disaster Recovery funding is approved (i.e., not retroactively to the start of construction), provided that HUD considers and DOL agrees that it is necessary and proper in the public interest to prevent injustice or undue hardship, and provided further that there is no evidence of intent to apply for Federal funding or assistance prior to contract award or start of construction, as appropriate.

d. *Reimbursement for completed construction work.* When HUD Disaster Recovery funds are proposed to reimburse property owners for construction work performed and fully completed as disaster damage rehabilitation, Federal labor standards provisions (i.e., Davis-Bacon wage rates and related requirements) are not applicable to the completed work provided that:

i. Neither the owner nor the city or county grantee, or for States, the unit of general local government, contemplated use of or reimbursement by HUD Disaster Recovery funds for the rehabilitation(s) before or during the time construction work was underway; and

ii. No other Federal funding requiring the payment of Davis-Bacon wage rates was used to carry out the work.

In these cases, the use of HUD Disaster Recovery funds to reimburse owners for completed rehabilitation does not constitute financing of construction work within the meaning of the labor standards provisions of Section 110 of the Act.

e. *Davis-Bacon Streamlining.* The HUD Office of Labor Relations has instituted a number of streamlining measures that significantly reduce the paperwork/recordkeeping burdens commonly attributed to Davis-Bacon projects. In addition, Labor Relations headquarters and field staff are committed to providing expedited processing on all matters related to HUD Disaster Recovery activities.

Note that most forms of HUD Disaster Recovery assistance to homeowners would not trigger Davis-Bacon requirements. Grantees should contact Richard S. Allan, Assistant to the Secretary for Labor Relations (Acting), or Jade M. Banks at (202)708–0370 for assistance in determining whether and to what extent Davis-Bacon requirements apply to specific activities undertaken with HUD Disaster Recovery funds. Information about Federal labor standards provisions and HUD programs is also available on the HUD Homepage at: http://www.hud.gov/olr/olr__int2.html.

3. *National Flood Insurance Program.*

a. Cities and counties may not use HUD Disaster Recovery Initiative funding in flood hazard areas for acquisition or construction projects in communities that have been identified by FEMA as nonparticipating, noncompliant communities under the National Flood Insurance Program. Specific guidance can be found in the references in paragraph 3.b. for cities and counties. Though State-administered formula programs are statutorily exempt from flood insurance purchase requirements, HUD strongly encourages States to adopt a similar policy if they have the authority to do so. Listings of participating, nonparticipating, and suspended communities are in the FEMA Federal Insurance Administration's ''National Flood Insurance Program Community Status Book,'' available on the World Wide Web at http://www.fema.gov/home/fema/csb.htm for viewing or downloading. FEMA's revised publication, ''Mandatory Purchase of Flood Insurance Guidelines,'' reflecting new provisions of the National Flood Insurance Reform Act of 1994 is also available on the World Wide Web at http://www/fema.gov/nfip/mpurfi.htm.

b. Section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106) provides that no Federal officer or agency shall approve any financial assistance for acquisition or construction purposes (as defined under section 3(a) of said Act (42 U.S.C. 4003(a)), one year after a community has been formally notified of its identification as a community containing an area of special flood hazard, for use in any area that has been identified by the Director of the Federal Emergency Management Agency as an area having special flood hazards unless the community in which such area is situated is then participating in the National Flood Insurance Program. Notwithstanding the date of HUD approval of a city's or county's Action Plan for Disaster Recovery funds shall

not be expended for acquisition or construction purposes in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless the community in which the area is situated is participating in the National Flood Insurance Program in accordance with 44 CFR parts 59–79, or less than a year has passed since FEMA notification to the community regarding such hazards; and, where the community is participating, flood insurance is obtained in accordance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012(a).)

M. Waiver of Statutory and Regulatory Requirements That Would Otherwise Apply to the HUD Disaster Recovery Initiative

1. Title II, Chapter 10 of the 1997 Supplemental Appropriations Act provides that in administering these amounts, the Secretary may waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these funds, except for statutory requirements related to civil rights, fair housing and nondiscrimination, the environment, and labor standards, upon a finding that such waiver is required to facilitate the use of such funds, and would not be inconsistent with the overall purpose of the statute. As noted, the Secretary may not waive statutory requirements related to civil rights, fair housing and nondiscrimination, the environment, or labor standards. The procedures set forth in this notice reflect the waiver of the statutory and regulatory requirements that the Secretary considered necessary for the implementation of the HUD Disaster Recovery Initiative, and that are authorized to be waived under Title II, Chapter 10 of the 1997 Supplemental Appropriations Act. The statutory and regulatory requirements that have been waived pertain to requirements governing consolidated planning submissions, CDBG program requirements, acquisition and relocation requirements, and other program related requirements. Appendix A to this notice lists the specific statutory and regulatory requirements that have been waived and sets forth the reasons for the waivers. With respect to the waivers of these statutory and regulatory requirements, no further action need be taken by the grantees.

2. HUD may issue additional waivers (beyond those already waived by the Secretary in the implementation of this initiative) deemed appropriate under this authority. HUD will consider additional waivers on a case-by-case basis, as requested by grantees. Such waivers will receive expedited review.

3. Grantees should give priority to projects that benefit low-and moderate-income individuals to the maximum extent possible.

II. Ensuring the Public Trust

A. Program Administrative, Recordkeeping and Reporting Requirements

The program administrative requirements at §§ 570.489–570.492 for States and at §§ 570.500–570.513 for cities and counties, which are not otherwise waived, shall apply, except that, with respect to reporting:

1. States must submit a Performance Evaluation Report (PER) pursuant to 24 CFR 91.520, separately for the HUD Disaster Recovery Initiative, similar in all other respects to that which is required for the CDBG program regulated at 24 CFR part 570. The first PER for the HUD Disaster Recovery Initiative will be due ninety (90) days after the 12-month period following the effective date of the grant and each 12-month period thereafter until all funds are spent. The PER must include a special narrative that discusses how the State assured that activities met the requirements of this Notice with respect to the buyout of structures in a disaster area.

2. Cities and counties must submit a Performance Report for the HUD Disaster Recovery Initiative in accordance with 24 CFR 91.520. The Performance Report will be due ninety (90) days after each 12-month period following the effective date of the grant each year until all funds are spent. The final Performance Report will be due ninety (90) days after all funds are spent. It also must include a special narrative that discusses how the city or county assured that activities met the requirements of this Notice with respect to the buyout of structures in a disaster area.

3. In addition, Congress has required that quarterly reports be submitted on all disbursements and use of funds for or associated with buyouts. Therefore, each grantee must submit a quarterly report, as HUD will prescribe, no later than 30 days following each calendar quarter, beginning after the first full calendar quarter after grant award. That report will include information on the project name, activity, location, national objective, funds budgeted and expended, non-HUD Disaster Recovery Initiative Federal source and funds, numbers of properties and housing units, and numbers of low- and moderate-income households. HUD will seek approval from OMB for any new information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

B. Cost Principles

1. *Direct and Indirect Cost principles.* Costs incurred, whether charged on a direct or an indirect basis, must be in conformance with OMB Circulars A–87, ''Cost Principles for State, Local and Indian Tribal Governments''; A–122, ''Cost Principles for Non-profit Organizations''; or A–21, ''Cost Principles for Educational Institutions,'' as applicable.[1] All items of cost listed in Attachment B of these Circulars that require prior Federal agency approval are allowable without prior approval of HUD to the extent they comply with the general policies and principles stated in Attachment A of such circulars and are otherwise eligible under the HUD Disaster Recovery Initiative, except for the following:

i. Depreciation methods for fixed assets shall not be changed without HUD's specific approval or, if charged through a cost allocation plan, the Federal cognizant agency.

ii. Fines and penalties (including punitive damages) are unallowable costs to the HUD Disaster Recovery Initiative.

iii. Pre-award costs for city and county grantees are limited to those authorized under § 570.200(h).

2. *Uniform administrative requirements and cost principles.* The city or county grantee, its agencies or instrumentalities, and subrecipients shall comply with the policies, guidelines, and requirements of 24 CFR part 85 and OMB Circulars A–87, A–110 (implemented at 24 CFR part 84), A–122, A–133 (implemented at 24 CFR part 45), as applicable, as they relate to the acceptance and use of Federal funds, HUD Disaster Recovery grants. The applicable sections of 24 CFR parts 84 and 85 are set forth at § 570.502. States shall comply with the applicable requirements of § 570.489 that are not otherwise waived.

3. Consultant activities. Consulting services are eligible for assistance for professional assistance in program planning, development of community development objectives, and other general professional guidance relating to program execution. The use of

[1] These circulars are available from the American Communities Center by calling the following toll-free numbers: (800) 998–9999 or (800) 483–2209 (TTY).

consultants is governed by the following:

a. *Employer-employee type of relationship.* No person providing consultant services in an employer-employee type of relationship shall receive more than a reasonable rate of compensation for personal services paid with HUD Disaster Recovery funds. In no event, however, shall such compensation exceed the equivalent of the daily rate paid for Level IV of the Executive Schedule. Such services shall be evidenced by written agreements between the parties that detail the responsibilities, standards, and compensation.

b. *Independent contractor relationship.* Consultant services provided under an independent contractor relationship are governed by the procurement requirements in 24 CFR 85.36 and are not subject to the Level IV limitation.

C. Public Law 88–352 and Public Law 90–284; Affirmatively Furthering Fair Housing; Executive Order 11063

1. The following requirements apply to HUD Disaster Recovery Initiative:

a. Public Law 88–352, which is title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), and implementing regulations in 24 CFR part 1.

b. Public Law 90–284, which is the Fair Housing Act (42 U.S.C. 3601–3620). In accordance with the Fair Housing Act, the Secretary requires that grantees administer all programs and activities related to housing and community development in a manner to affirmatively further the policies of the Fair Housing Act. Furthermore, for each grantee receiving a HUD Disaster Recovery grant, the certification that the grantee will affirmatively further fair housing shall specifically require the grantee to assume the responsibility of fair housing planning by conducting an analysis to identify impediments to fair housing choice within its jurisdiction, taking appropriate actions to overcome the effects of any impediments identified through that analysis, and maintaining records reflecting the analysis and actions in this regard.

2. Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1959–1963 Comp., p. 652; 3 CFR, 1980 Comp., p. 307)(Equal Opportunity in Housing), and implementing regulations in 24 CFR part 107, also apply.

D. Section 109 of the Act

1. No person in the United States shall on the ground of race, color, religion, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with HUD Disaster Recovery funds made available pursuant to the Act. For purposes of this requirement, ''program or activity'' is defined as any function conducted by an identifiable administrative unit of the recipient, or by any unit of government, subrecipient, or private contractor receiving HUD Disaster Recovery grant funds or loans from the recipient. ''Funded in whole or in part with HUD community development funds'' means that HUD Disaster Recovery funds have been transferred by the recipient or a subrecipient to an identifiable administrative unit and disbursed in a program or activity. The term ''recipient'' means recipient as defined in § 1.2(f).

2. *Specific discriminatory actions prohibited and corrective actions.* a. A recipient may not, under any program or activity, directly or through contractual or other arrangements, on the ground of race, color, religion, national origin, or sex:

i. Deny any individual any facilities, services, financial aid or other benefits provided under the program or activity.

ii. Provide any facilities, services, financial aid or other benefits that are different, or are provided in a different form, from that provided to others under the program or activity.

iii. Subject an individual to segregated or separate treatment in any facility in, or in any matter of process related to receipt of any service or benefit under the program or activity.

iv. Restrict an individual in any way in access to, or in the enjoyment of, any advantage or privilege enjoyed by others in connection with facilities, services, financial aid or other benefits under the program or activity.

v. Treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or other requirement or condition that the individual must meet in order to be provided any facilities, services or other benefit provided under the program or activity.

vi. Deny an individual an opportunity to participate in a program or activity as an employee.

b. A recipient may not use criteria or methods of administration that have the effect of subjecting persons to discrimination on the basis of race, color, religion, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to persons of a particular race, color, religion, national origin, or sex.

c. A recipient, in determining the site or location of housing or facilities provided in whole or in part with funds, may not make selections of such site or location that have the effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination on the ground of race, color, religion, national origin, or sex; or that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act.

d. i. In administering a program or activity funded in whole or in part with HUD Disaster Recovery funds regarding which the recipient has previously discriminated against persons on the ground of race, color, religion, national origin or sex, or if there is sufficient evidence to conclude that such discrimination existed, the recipient must take remedial affirmative action to overcome the effects of prior discrimination. The word ''previously'' does not exclude current discriminatory practices.

ii. In the absence of discrimination, a recipient, in administering a program or activity funded in whole or in part with HUD Disaster Recovery funds, may take any nondiscriminatory affirmative action necessary to ensure that the program or activity is open to all without regard to race, color, religion, national origin or sex.

iii. After a finding of noncompliance or after a recipient has a firm basis to conclude that discrimination has occurred, a recipient shall not be prohibited from taking any eligible action to ameliorate an imbalance in services or facilities provided to any geographic area or specific group of persons within its jurisdiction, where the purpose of such action is to remedy prior discriminatory practice or usage.

e. Notwithstanding anything to the contrary, nothing contained herein shall be construed to prohibit any recipient from maintaining or constructing separate living facilities or rest room facilities for the different sexes. Furthermore, selectivity on the basis of sex is not prohibited when institutional or custodial services can properly be performed only by a member of the same sex as the recipients of the services.

3. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*) or with respect to an otherwise qualified handicapped person as provided in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) shall also apply to any program or

activity funded in whole or in part with HUD Disaster Recovery funds. HUD regulations implementing the Age Discrimination Act are contained in 24 CFR part 146 and the regulations implementing section 504 are contained in 24 CFR part 8.

E. Environmental Review Requirements

1. Prior to the commitment of any HUD Disaster Recovery funds, grantees must comply with the regulations in 24 CFR part 58. These regulations require: the analysis of potential environmental impacts; consultation with interested parties; and public notification of the results of the analysis and intent to request release of funds from HUD. Also, they require that the State or local government assume compliance with these rules by execution of the grant agreement with HUD, and a State or local government certification that it will comply with all the applicable Federal environmental rules.

2. *Disaster Recovery Assistance in a Flood Plain.* a. Grantees must follow the eight-step decision-making process required by Executive Order 11988, Flood Plain Management, codified for HUD programs at § 55.20. The Order covers the proposed acquisition, construction, improvement, disposition, financing, and use of property in a flood plain. Other related Federal environmental laws and authorities noted at § 58.5 may also apply.

b. The Office of Management and Budget (OMB) and the Council on Environmental Quality (CEQ) jointly issued a memorandum on February 18, 1997 entitled ''Floodplain Management and Procedures For Evaluation and Review of Levee and Associated Restoration Projects,'' which emphasizes the need to consider nonstructural alternatives, e.g., ''buyouts,'' in flood disaster recovery activities and the need for coordination among all levels of government.

3. Environmental assessments and reviews may be tiered to eliminate duplication and to save time and resources. For other Federal programs, environmental assessments and reviews are not carried out by grantees as they are for the HUD Disaster Recovery Initiative, but are usually undertaken by Federal staff or contractors. Therefore, grantees must coordinate with other Federal agencies, e.g., FEMA, to tier environmental assessments and reviews for activities funded by programs of both Federal agencies.

4. *Joint Environmental Assessments between HUD and Other Federal Agencies.* a. In addition to the provisions of § 58.33, the following special procedures may be employed when a project related to recovery from a covered disaster is jointly funded by HUD and other Federal agencies.

b. A State or local government administering Federal environmental requirements for the HUD Disaster Recovery Initiative may enter into cooperating agreements with other Federal agencies to prepare an environmental assessment for a HUD Disaster Recovery Initiative-funded project. The cooperating agreement will identify the project, all Federal agencies party to the agreement (including State and local governments acting for HUD under the provisions of 24 CFR part 58), which agency will be the lead agency and prepare the environment assessment, and the scope of the assessment, including the size and area of potential impact. The lead agency will prepare the assessment, using its own CEQ-approved procedures, and conduct all required reviews, consultations and public notifications under applicable related laws and authorities.

c. The provisions of 24 CFR part 58 would apply if a State or local government administering a HUD-funded program that is subject to part 58 (e.g., the HUD Disaster Recovery Initiative) is the lead agency.

d. If the State or local government that assumes the HUD environmental review responsibilities is not the lead agency, then that government must review the completed environmental assessment that was prepared by a lead agency under the cooperating agreement. If the review of the document determines that the information is not accurate or complete or does not meet the requirements of 24 CFR part 58, a State or local government administering the provisions of 24 CFR part 58 must reject the assessment and prepare its own independent assessment as required in 24 CFR part 58. A State or local government acting as a cooperating agency remains responsible for review under authorities that may be unique to HUD-assisted projects under part 58, i.e., HUD environmental standards in 24 CFR part 51 and HUD policy regarding toxic or hazardous materials. However, if a lead agency's assessment meets the requirements of part 58, except for a lack of coverage of these particular areas, the cooperating agency need not reject the assessment. In these cases, the cooperating agency may add its own review of these areas and its own findings regarding the overall environmental impact of the project.

e. If an assessment showing no significant environmental impact is adopted by a State or local government administering the provisions of 24 CFR part 58, it must formally record its adoption pursuant to § 58.38, prepare a statement that the proposed HUD funding of the proposed project produces no significant environmental impact (FONSI), and follow the provisions for release of funds as stated in subpart H of 24 CFR part 58, including notice to the public and the statutory waiting period.

F. Displacement, Relocation, Acquisition, and Replacement of Housing

1. *General policy for minimizing displacement.* Consistent with the other goals and objectives of the HUD Disaster Recovery Initiative, grantees (or States or State recipients, as applicable) shall assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of activities assisted under this program.

2. *Relocation assistance for displaced persons at URA levels.* a. A displaced person shall be provided with relocation assistance at the levels described in, and in accordance with the requirements of, 49 CFR part 24, which contains the government-wide regulations implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601–4655).

b. *Displaced person.* i. For purposes of paragraph 2. of this section, the term ''displaced person'' means any person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves his or her personal property from real property, permanently and involuntarily, as a direct result of rehabilitation, demolition, or acquisition for an activity assisted under this initiative. A permanent, involuntary move for an assisted activity includes a permanent move from real property that is made:

(1) After notice by the grantee (or the State recipient, if applicable) to move permanently from the property, if the move occurs after the initial official submission to HUD (or the State, as applicable) for grant, loan, or loan guarantee funds under this initiative that are later provided or granted.

(2) After notice by the property owner to move permanently from the property, if the move occurs after the date of the submission of a request for financial assistance by the property owner (or person in control of the site) that is later approved for the requested activity.

(3) Before the date described in paragraph 2.b.i.(1) or (2), if either HUD or the grantee (or State, as applicable) determines that the displacement

directly resulted from acquisition, rehabilitation, or demolition for the requested activity.

(4) If the person is the tenant-occupant of a dwelling unit and any one of the following two situations occurs:

(a) The tenant is required to relocate temporarily for the activity but the tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary location and any increased housing costs, or other conditions of the temporary relocation are not reasonable; and the tenant does not return to the building/complex; or

(b) The tenant is required to move to another unit in the building/complex, but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move.

ii. Notwithstanding the provisions of paragraph 2.b.i., the term ''displaced person'' does not include:

(1) A person who is evicted for cause based upon serious or repeated violations of material terms of the lease or occupancy agreement. To exclude a person on this basis, the grantee (or State or State recipient, as applicable) must determine that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance under this section;

(2) A person who moves into the property after the date of the notice described in paragraph 2.b.i. (1) or (2) of this section, but who received a written notice of the expected displacement before occupancy.

(3) A person who is not displaced as described in 49 CFR 24.2(g)(2).

(4) A person who the grantee (or State, as applicable) determines is not displaced as a direct result of the acquisition, rehabilitation, or demolition for an assisted activity. To exclude a person on this basis, HUD must concur in that determination.

iii. A grantee (or State or State recipient, as applicable) may, at any time, request HUD to determine whether a person is a displaced person under this section.

3. *Optional relocation assistance.* In connection with the use of HUD Disaster Recovery funds for buyouts, a grantee may provide (or the State may permit the State recipient to provide, as applicable) relocation payments and other relocation assistance to persons displaced by activities that are not subject to paragraphs 2. or 3. The grantee may also provide (or the State may also permit the State recipient to provide, as applicable) relocation assistance to persons receiving assistance under paragraphs 2. or 3. of this section at levels in excess of those required by these paragraphs. Unless such assistance is provided under State or local law, the grantee (or State recipient, as applicable) shall provide such assistance only upon the basis of a written determination that the assistance is appropriate. The grantee (or State recipient, as applicable) must adopt a written policy available to the public that describes the relocation assistance that the grantee (or State recipient, as applicable) has elected to provide and that provides for equal relocation assistance within each class of displaced persons.

4. *Acquisition of real property.* The acquisition of real property for an assisted activity is subject to 49 CFR part 24, subpart B.

5. *Appeals.* If a person disagrees with the determination of the grantee (or the State recipient, as applicable) concerning the person's eligibility for, or the amount of, a relocation payment under this section, the person may file a written appeal of that determination with the grantee (or the State recipient, as applicable). The appeal procedures to be followed are described in 49 CFR 24.10. In addition, a low- or moderate-income household that has been displaced from a dwelling may file a written request for review of the grantee's decision to the HUD Field Office. For purposes of State HUD Disaster Recovery funds, a low- or moderate-income household may file a written request for review of the State recipient's decision with the State.

6. *Responsibility of grantee or State.* a. The grantee (or State, if applicable) is responsible for ensuring compliance with these requirements, notwithstanding any third party's contractual obligation to the grantee to comply with the provisions of this section. For purposes of State HUD Disaster Recovery funds, the State shall require State recipients to certify that they will comply with the requirements of this section.

b. The cost of assistance required under this section may be paid from local public funds, funds provided under this initiative, or funds available from other sources.

c. The grantee (or State and State recipient, as applicable) must maintain records in sufficient detail to demonstrate compliance with the provisions of this section.

G. Employment and Contracting Opportunities

1. Grantees shall comply with Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR, 1964–1965 Comp., p. 339; 3 CFR, 1966–1970 Comp., p. 684; 3 CFR, 1966–1970 Comp., p. 803; 3 CFR, 1978 Comp., p. 230; and 3 CFR, 1978 Comp., p. 264) (Equal Employment Opportunity) and the implementing regulations at 41 CFR chapter 60; and

2. Though requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135, are waived, HUD encourages each grantee to give priority to the hiring of local low and moderate income persons and contractors in carrying out its disaster recovery activities.

3. *Contracting with small and minority firms, women's business enterprises and labor surplus area firms.* a. The grantee and subgrantee must take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

b. Affirmative steps include:

i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

ii. Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;

iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

v. Using the services and assistance of SBA and the Minority Business Development Agency of the U.S. Department of Commerce; and

vi. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in subparagraphs (1) through (5) above.

Lead-Based Paint

1. *Requirements for city and county grantees.* City and county grantees shall comply with the requirements of § 570.608.

2. *Requirements for State grantees.* States shall comply with the provisions of § 570.487(c).

Architectural Barriers Act and the Americans With Disabilities Act

1. The Architectural Barriers Act of 1968 (42 U.S.C. 4151–4157) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that insure

accessibility to, and use by, physically handicapped people. A building or facility designed, constructed, or altered with funds allocated or reallocated under this initiative after December 11, 1995, and that meets the definition of ''residential structure'' as defined in 24 CFR 40.2 or the definition of ''building'' as defined in 41 CFR 101–19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151–4157) and shall comply with the Uniform Federal Accessibility Standards (Appendix A to 24 CFR part 40 for residential structures, and Appendix A to 41 CFR part 101–19, subpart 101–19.6, for general type buildings).

2. The Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218 and 225) (ADA) provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications. It further provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 26, 1993 that are readily accessible to and usable by individuals with disabilities. Further, the ADA requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable—that is, easily accomplishable and able to be carried out without much difficulty or expense.

J. Constitutional Prohibition

1. In accordance with First Amendment church/state principles, as a general rule, HUD Disaster Recovery Grant assistance may not be used for religious activities or provided to primarily religious entities for any activities, including secular activities.

2. The following restrictions and limitations therefore apply to the use of HUD Disaster Recovery funds.

a. HUD Disaster Recovery funds may not be used for the acquisition of property or the construction or rehabilitation (including historic preservation and removal of architectural barriers) of structures to be used for religious purposes or purposes that will otherwise promote religious interests. This limitation includes the acquisition of property for ownership by primarily religious entities and the construction or rehabilitation (including historic preservation and removal of architectural barriers) of structures owned by such entities (except as permitted under paragraph 2.b. of this section with respect to rehabilitation and under paragraph 2.d. of this section with respect to repairs undertaken in connection with public services) regardless of the use to be made of the property or structure. Property owned by primarily religious entities may be acquired with HUD Disaster Recovery funds at no more than fair market value for a non-religious use.

b. HUD Disaster Recovery funds may be used to rehabilitate buildings owned by primarily religious entities to be used for a wholly secular purpose under the following conditions:

i. The building (or portion thereof) that is to be improved with the HUD Disaster Recovery Initiative assistance has been leased to an existing or newly established wholly secular entity (which may be an entity established by the religious entity);

ii. The HUD Disaster Recovery Initiative assistance is provided to the lessee (and not the lessor) to make the improvements;

iii. The leased premises will be used exclusively for secular purposes available to persons regardless of religion;

iv. The lease payments do not exceed the fair market rent of the premises as they were before the improvements are made;

v. The portion of the cost of any improvements that also serve a non-leased part of the building will be allocated to and paid for by the lessor;

vi. The lessor enters into a binding agreement that unless the lessee, or a qualified successor lessee, retains the use of the leased premises for a wholly secular purpose for at least the useful life of the improvements, the lessor will pay to the lessee an amount equal to the residual value of the improvements;

vii. The lessee must remit the amount received from the lessor under paragraph b.vi. of this section to the recipient or subrecipient from which the HUD Disaster Recovery funds were derived.

viii. The lessee can also enter into a management contract authorizing the lessor religious entity to use the building for its intended secular purpose, e.g., homeless shelter, provision of public services. In such case, the religious entity must agree in the management contract to carry out the secular purpose in a manner free from religious influences in accordance with the principles set forth in paragraph c.

c. As a general rule, HUD Disaster Recovery funds may be used for eligible public services to be provided through a primarily religious entity, where the religious entity enters into an agreement with the recipient or subrecipient from which the HUD Disaster Recovery funds are derived that, in connection with the provision of such services:

i. It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

ii. It will not discriminate against any person applying for such public services on the basis of religion and will not limit such services or give preference to persons on the basis of religion;

iii. It will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in the provision of such public services;

iv. Where the public services provided under paragraph 2.c. are carried out on property owned by the primarily religious entity, HUD Disaster Recovery funds may also be used for minor repairs to such property that are directly related to carrying out the public services where the cost constitutes in dollar terms only an incidental portion of the HUD Disaster Recovery grant expenditure for the public services.

K. Political Activities

HUD Disaster Recovery funds may not be used to finance the use of facilities or equipment for political purposes or to engage in other partisan political activities, such as candidate forums, voter transportation, or voter registration. However, a facility originally assisted with HUD Disaster Recovery funds may be used on an incidental basis to hold political meetings, candidate forums, or voter registration campaigns, provided that all parties and organizations have access to the facility on an equal basis, and are assessed equal rent or use charges, if any.

L. Use of Debarred, Suspended, or Ineligible Contractors or Subrecipients

The requirements set forth in 24 CFR part 24 apply to this program.

M. Conflict of Interest

1. In the procurement of supplies, equipment, construction, and services by city and county grantees and by their subrecipients, the conflict of interest provisions in §§ 85.36 and 84.42, respectively, shall apply. States and their recipients shall be governed by the provisions of § 570.489(g).

2. In all cases not governed by 24 CFR 85.36 and 84.42, the following provisions shall apply. Such cases include the acquisition and disposition

of real property and the provision of assistance by the recipient or by its subrecipients to individuals, businesses, and other private entities under eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities pursuant to § 570.202; or grants, loans, and other assistance to businesses, individuals, and other private entities pursuant to §§ 570.203, 570.204, or 570.703(i)).

3. *Conflicts prohibited.* The general rule is that no persons described in paragraph 4. who exercise or have exercised any functions or responsibilities with respect to HUD Disaster Recovery Initiative activities, or who are in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a HUD Disaster Recovery grant, or have a financial interest in any contract, subcontract, or agreement with respect to a HUD Disaster Recovery grant, or with respect to the proceeds of the HUD Disaster Recovery Initiative-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter.

4. *Persons covered.* The conflict of interest provisions of paragraph 2. of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the recipient, or of any designated public agencies, or of subrecipients that are receiving HUD Disaster Recovery funds.

5. *Exceptions.* Upon the written request of a city or county grantee, HUD may grant an exception to the provisions of paragraph 2. of this section on a case-by-case basis when it has satisfactorily met the threshold requirements of paragraph 5.a., taking into account the cumulative effects of paragraph 5.b. State grantees shall follow the provisions of § 570.489(h) covering exceptions to the provisions of paragraph 2.

a. *Threshold requirements.* HUD will consider an exception only after the recipient has provided the following documentation:

i. A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

ii. An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law.

b. *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the recipient has satisfactorily met the requirements of paragraph 5.a., HUD shall conclude that such an exception will serve to further the purposes of the HUD Disaster Recovery Initiative and the effective and efficient administration of the recipient's program or project, taking into account the cumulative effect of the following factors, as applicable:

i. Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available;

ii. Whether an opportunity was provided for open competitive bidding or negotiation;

iii. Whether the person affected is a member of a group or class of low-or moderate-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

iv. Whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process with respect to the specific assisted activity in question;

v. Whether the interest or benefit was present before the affected person was in a position as described in paragraph b. of this section;

vi. Whether undue hardship will result either to the recipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

vii. Any other relevant considerations.

N. Performance Reviews and Dispute Resolution and Enforcement Actions

The provisions of 24 CFR subparts I and O apply to States and to cities and counties, respectively, regarding HUD's review of grantee performance, resolution of disputes regarding grantee performance, and adjudicative, remedial and enforcement actions that HUD may take to resolve noncompliance matters.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the HUD Disaster Recovery Initiative are as follows: 14.218; 14.219; 14.228.

Dated: September 3, 1997.

Jacquie M. Lawing,

General Deputy Assistant Secretary for Community Planning and Development.

Appendix A—Waiver of Requirements for Community Development Block Grant Funds Under the 1997 Emergency Supplemental Appropriations Act for Recovery From Natural Disasters (Public Law 105–18)

Title II, Chapter 10 of the 1997 Emergency Supplemental Appropriations Act for Recovery from Natural Disasters (the Act), appropriates $500 million in Community Development Block Grant (CDBG) funds to use for buyouts, relocation, long-term recovery, and mitigation in communities affected by the flooding in the upper Midwest and other covered natural disasters.

With respect to these supplemental funds, the Act authorizes the Secretary of HUD to ''waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these funds, except for statutory requirements related to civil rights, fair housing and nondiscrimination, the environment, and labor standards, upon a finding that such waiver is required to facilitate the use of such funds, and would not be inconsistent with the overall purpose of the statute.''

In conjunction with this statutory provision and pursuant to 24 CFR 5.110, the Department has determined that it has good cause to waive certain regulatory provisions governing the use of Disaster Recovery Initiative funds. Therefore, to facilitate the use of the Disaster Recovery Initiative funds appropriated under Chapter 10 of the Act, the following provisions have been waived for the reasons set forth below. These waivers apply to activities funded under the Act with Disaster Recovery Initiative funds.

Consolidated Submissions for Community Planning and Development Programs

Description of Requirements Waived

- Citizen participation requirements at 42 U.S.C. 5304(a), 42 U.S.C. 5306(d)(5)(C), 24 CFR 91.105(c) and 91.115(c), to the extent that expedited amendment of the grantee's Consolidated Plan is necessary to ensure timely delivery of assistance, except that grantees must provide alternative procedures for public notice of funding availability, as approved by HUD.

Justification: To provide the flexibility to expedite the availability of disaster recovery assistance, if necessary.

- The requirements at 42 U.S.C. 12705(a)(2), 42 U.S.C. 5304(a)(1), 42 U.S.C. 5304(m), 24 CFR 91.220, 24 CFR 91.235, 24 CFR 31.320 and 24 CFR 570.420(d).

Justification: To provide the flexibility to expedite the availability of disaster recovery assistance, if necessary. These requirements concern the submission of an Annual Action Plan (for cities, counties and states receiving annual allocations of regular CDBG funding); 24 CFR 91.235 contains the requirements for Abbreviated Consolidated Plans (for non-entitled units of general local government not receiving CDBG funding through a state). 42

U.S.C. 5304(m) contains the requirement for submission of a Community Development Plan describing a grantee's priority non-housing community development needs. Paragraph I. E. of the **Federal Register** Notice implementing the Disaster Recovery Initiative establishes streamlined, alternative planning and submission requirements for Disaster Recovery Initiative funding which meet the intent of the National Affordable Housing Act and the Housing and Community Development Act. All city, county and state grantees which receive formula allocations of CDBG funding have already met the statutory and regulatory requirements for the five-year strategic plan in the Consolidated Plan.

• Citizen participation requirements at 42 U.S.C. 5304(a)(2) and (a)(3) (A) through (E), 24 CFR 91.100 through 91.115, 24 CFR 570.405(h), 24 CFR 570.431 and 24 CFR 570.486(a).

Justification: To provide the flexibility to expedite the availability of disaster recovery assistance, if necessary. Paragraph I. E. of the **Federal Register** Notice implementing the Disaster Recovery Initiative establishes streamlined, alternative citizen participation requirements for Disaster Recovery Initiative funding which meet the intent of the National Affordable Housing Act and the Housing and Community Development Act.

Community Development Block Grant Program

Description of Requirements Waived

• The definition of a ''unit of general local government'' at 42 U.S.C. 5302(a)(1) and 24 CFR 570.3.

Justification: The statutory and regulatory definitions of a unit of general local government have, over time, become outdated. The definition includes the Trust Territory of the Pacific Islands. Since this definition was first enacted, all jurisdictions within the Trust Territory of the Pacific have become independent nations. The definition of a unit of general local government included in the **Federal Register** Notice implementing the Disaster Recovery Initiative excludes the Trust Territory of the Pacific.

• Requirements at 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A), 24 CFR 570.200(a)(3) (for cities and counties) and 24 CFR 570.484 (for States) that 70 percent of funds, over a period not to exceed three years, are for activities that benefit low and moderate income persons.

• *Justification:* Because the damage to community development and housing is without regard to income, it is important to give grantees maximum flexibility to carrying activities within the confines of the CDBG program national objectives. Paragraph I.B.2 of the **Federal Register** Notice implementing the Disaster Recovery Initiative establishes alternative requirements for complying with the statutory mandate that each grantee's program principally (at least 50%) benefit low- and moderate-income persons.

• Requirements at 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A), 24 CFR 570.200(a)(3) for the CDBG entitlement program and 570.484 for the State CDBG program that 70 percent of funds, over a period not to exceed three years, are for activities that benefit low and moderate income persons.

Justification: Because the damage to community development and housing is without regard to income, it is important to give grantees maximum flexibility to carrying activities within the confines of the CDBG program national objectives.

• Requirements at 42 U.S.C. 5305(a), 24 CFR 570.200 (a)(1) and (e) through (h), 24 CFR 570.201 through 570.207, and 24 CFR 570.482 (a) through (d), concerning activities eligible for funding under the Disaster Recovery Initiative.

Justification: To give maximum flexibility to grantees in addressing the wide variety of needs resulting from natural disasters, the Department has established alternative requirements for eligible activities at paragraph I.F.1 of the **Federal Register** Notice implementing the Disaster Recovery Initiative. These requirements will ensure compliance with the eligibility requirements of Title II, Chapter 10 of Public Law 105–18, and will ensure accountability in the use of funds.

• Prohibitions on new housing construction at 24 CFR 570.207(b)(3) and modifying 42 U.S.C. 5305(a) to provide for the use of such designated funds for new housing construction.

24 CFR 570.207(b)(3) prohibits use of funds for new housing construction except for assisted housing under section 17 of the United States Housing Act of 1937, housing constructed by a special subrecipient, pursuant to § 570.204(a), and last resort housing under the Uniform Relocation Act pursuant to 49 CFR Part 24.

Justification: If a large number of housing units are destroyed as a result of the disaster, the flexibility to permit grantees to directly provide new construction assistance would be essential in furthering the purposes of disaster recovery.

• Restrictions on the repair or reconstruction of buildings used for the general conduct of government at 42 U.S.C. 5305 (a)(2) and (a)(14), and 24 CFR 570.207(a)(1).

Justification: Required if there is significant damage to public buildings. Waiver of this provision would permit repair and reconstruction.

• The 50 percent of downpayment limitation on direct homeownership assistance for low or moderate income homebuyers at 42 U.S.C. 5305(a)(24)(D).

Justification: Required to provide additional assistance to low/moderate income disaster victims in instances in which direct homeownership assistance with 50 percent of a downpayment is insufficient.

• The limitation on the amount of funds used for public services at 42 U.S.C. 5305(a)(8) and 24 CFR 570.201 (e)(1) or (2), as applicable to the affected grantee, to hereby modify those provisions to allow an increase of 10 percent above the previous limitation.

Justification: Disaster response may require additional level of public services and public services not previously provided by grantees during emergency and recovery periods, e.g., day care, housing counseling, legal services, health services, safety services.

• Provisions of 42 U.S.C. Chapter 69—Community Development and 24 CFR part 570 that would prohibit States electing to receive CDBG funds from distributing such funds to units of general local government in entitlement communities and to Indian tribes, including 42 U.S.C. 5306(d) (1) and (2)(A) and 24 CFR 570.480(a), to the extent that such provisions limit the distribution of funds to units of general local government located in nonentitlement areas and to Indian tribes.

Justification: This provides the State the flexibility necessary to meet a wide range of recovery needs in any areas of the State, including those in entitlement communities and on Indian reservations, that have been affected by the disaster.

• Requirements that the State grantees must match the amount of CDBG funds used for the administration of the State's CDBG program at 42 U.S.C. 5306(d)(3)(A) and 24 CFR 570.489(a)(1) with respect to funds designated for disaster recovery under 42 U.S.C. 5321.

Justification: Waiving these provisions would prevent undue hardship on the State and further the purposes of disaster recovery.

• Requirements at 24 CFR 570.480(a), 570.481(a) and 570.486(b).

Justification: These provisions describe requirements which are specific to States' administration of CDBG funding for non-entitlement areas. 24 CFR 570.480(a) indicates that other subparts of Part 570 are generally not applicable to the State CDBG program; 24 CFR 570.481(a) indicates that HUD will defer to States' interpretations of the definitions of terms contained in 42 U.S.C. 5300 et. seq.; 24 CFR 570.486(b) governs activities serving beneficiaries outside the jurisdiction of the unit of general local government. HUD is waiving a number of statutory definitions for purposes of the Disaster Recovery Initiative. HUD has determined that it is necessary to apply certain program requirements of the Disaster Recovery Initiative uniformly to city, county and State grantees. Where possible, the **Federal Register** Notice implementing the Disaster Recovery Initiative retains the administrative flexibility provided to States in the State CDBG program.

• Requirements of 42 U.S.C. 5306(d)(3)(A) and 24 CFR 570.489(a) concerning the use of Disaster Recovery Initiative funds for State administrative costs, including matching funds requirements.

Justification: Waiving these provisions would prevent undue hardship on States and would further the purposes of disaster recovery, by eliminating the requirement that Disaster Recovery Initiative funds spent on State administrative costs be matched with State funding. Paragraph I.F.6.b of the **Federal Register** Notice implementing the Disaster Recovery Initiative establishes alternative requirements for States' use of funds for costs incurred in administering this funding.

• The provisions at 42 U.S.C. 5304(j) and 24 CFR 570.489(e), for the State CDBG program, that require States to allow units of local government to retain program income. All program income will be returned to the State and will become program income for

the year in which the State redistributes those funds.

Justification: Waiver of this provision will also allow States to quickly utilize all program income for other eligible activities.

• Requirements of 42 U.S.C. 5306(d)(2)(C)(iii) concerning restrictions on a State's ability to limit activities eligible for funding.

Justification: Waiving these requirements will increase State grantees' flexibility in prioritizing and responding to disaster recovery needs.

Acquisition and Relocation Requirements for CDBG Disaster Supplemental Funds

Description of Requirements Waived

• One-for-one replacement requirements at 42 U.S.C. 5304(d)(2) and 24 CFR 570.606(c)(1), for low and moderate income dwelling units (1) damaged by the disaster, (2) for which CDBG funds are used for demolition, and (3) which are not suitable for rehabilitation.

Requires that all occupied and vacant occupiable low/moderate income dwelling units that are demolished or converted to a use other than as low/moderate income dwelling units in connection with a CDBG activity must be replaced with low/moderate income dwelling units.

Justification: Not waiving this provision would discourage grantees from demolition and clearance of dwelling units that would otherwise be appropriate for CDBG assistance. Such inaction would inhibit recovery efforts and add to health and safety problems.

• Relocation requirements at 42 U.S.C. 5304(d)(2)(iii) and (iv) and 24 CFR 570.606(c)(2), in order to permit a grantee to meet all or part of its obligation to provide relocation benefits to displaced persons under sections 204 and 205 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 et. seq) (URA).

The statutory requirements of the URA are also applicable to the administration of FEMA's assistance, and disparities in rental assistance payments for activities funds by HUD and that agency will thus be eliminated.

Justification: FEMA is subject to the requirements of the URA. Pursuant to this authority, FEMA requires that rental assistance payments be calculated on the basis of the amount necessary to lease or rent comparable housing for a period of 42 months. HUD is also subject to these requirements, but is also covered by alternative relocation provisions authorized under 42 U.S.C. 5304(d)(2)(iii) and (iv) and implementing regulations at 24 CFR 570.606(c)(2). These alternative relocation benefits, available to low- and moderate-income displacees opting to receive them in certain HUD programs, require the calculation of similar rental assistance payments on the basis of 60 months, rather than 42 months, thereby creating a disparity between the available benefits offered by HUD and FEMA, respectively. The waiver assures uniform and equitable treatment for all such tenants under the URA, as qualified by this waiver.

• Requirements at 49 CFR 24.2(d)(8)(ii), 24.402(b)(2) and 24.404, to the extent that they require grantees to provide URA financial assistance sufficient to reduce the displaced person's post-displacement rent/utility cost to 30 percent of household income.

Justification: The failure to suspend these requirements would impede disaster recovery. To the extent that a tenant has been paying rents in excess of 30 percent of household income without demonstrable hardship, rental assistance payments to reduce tenant costs to 30 percent would not be required.

• Requirements of Sections 204 and 205 of the URA, and 49 CFR Part 24, to the extent necessary to permit a grantee to meet all or a portion of a grantee's replacement housing financial assistance obligation to a displaced renter who elects to relocate to rental housing through a tenant-based rental assistance (TBRA) housing program subsidy (e.g., Section 8 rental voucher or certificate) provided that the renter is also provided referrals to suitable, available rental replacement dwellings where the owner is willing to participate in the TBRA program, and the period of authorized assistance is at least 42 months.

Justification: Failure to grant the waiver would impede disaster recovery whenever TBRA program subsidies are available but funds for cash relocation assistance are limited. The change conforms URA policy with Section 104(d) relocation assistance.

• Requirements of Section 202(b) of the URA and 49 CFR 24.302, to the extent that they require a grantee to offer a person displaced from a dwelling unit the option to receive a ''moving expense and dislocation allowance'' based on the current schedule of allowances prepared by the Federal Highway Administration, provided that the grantee establishes and offers the person a moving expense and dislocation allowance under a schedule of allowances that are reasonable for the jurisdiction and take into account the number of rooms in the displacement dwelling, whether the person owns and must move the furniture, and, at a minimum, the kinds of expenses described in 49 CFR 24.303(a)(1).

Justification: Failure to suspend this provision would impede disaster recovery by requiring grantees to offer allowances that do not reflect local labor and transportation costs. Persons displaced from a dwelling remain entitled to choose a payment for actual reasonable moving and related expenses if they find that approach preferable to the locally established moving expense and dislocation allowance.

• Requirements of Section 414 of the Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5181) so that Uniform Relocation Act provisions do not apply when a homeowner displaced by the disaster is assisted.

Section 414 states: ''Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act.''

Justification: Failure to waive Section 414 would impede disaster recovery, discouraging grantees from the acquisition, demolition or rehabilitation of disaster-damaged housing because of excessive costs that would result from replacement housing payments made to former homeowners displaced by the disaster. Homeowners actually displaced by a HUD-assisted disaster recovery project will continue to receive URA assistance. Homeowners displaced by the disaster may apply for assistance under available disaster recovery programs.

Other Applicable Requirements

• Requirements of 12 U.S.C. 1701u, 24 CFR 570.607(b) and 24 CFR part 135, concerning the requirements of Section 3 of the Housing and Urban Development Act of 1968.

Justification: Waiving these requirements will increase grantees' flexibility in responding to disaster recovery needs and will increase the efficiency with which activities may be implemented to meet those needs. However, in the **Federal Register** Notice implementing the Disaster Recovery Initiative funding, HUD encourages grantees to give priority to the hiring of local low-and moderate-income persons and contractors in carrying out its activities.

• Requirements of 24 CFR 570.612 and 24 CFR part 52, concerning applicability of Executive Order 12372 regarding intergovernmental consultation and review of activities proposed for Federal funding.

Justification: Waiving these requirements will increase grantees' flexibility in responding to disaster recovery needs and will increase the efficiency with which activities may be implemented to meet those needs.

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●800–End	(869–032–00044–1)	22.00	Jan. 1, 1997
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●0–999	(869–032–00045–0)	30.00	Jan. 1, 1997
●1000–End	(869–032–00046–8)	34.00	Jan. 1, 1997
17 Parts:			
●1–199	(869–032–00048–4)	21.00	Apr. 1, 1997
●200–239	(869–032–00049–2)	32.00	Apr. 1, 1997
●240–End	(869–032–00050–6)	40.00	Apr. 1, 1997
18 Parts:			
●1–399	(869–032–00051–4)	46.00	Apr. 1, 1997
●400–End	(869–032–00052–2)	14.00	Apr. 1, 1997
19 Parts:			
●1–140	(869–032–00053–1)	33.00	Apr. 1, 1997
●141–199	(869–032–00054–9)	30.00	Apr. 1, 1997
●200–End	(869–032–00055–7)	16.00	Apr. 1, 1997
20 Parts:			
●1–399	(869–032–00056–5)	26.00	Apr. 1, 1997
●400–499	(869–032–00057–3)	46.00	Apr. 1, 1997
●500–End	(869–032–00058–1)	42.00	Apr. 1, 1997
21 Parts:			
●1–99	(869–032–00059–0)	21.00	Apr. 1, 1997
●100–169	(869–032–00060–3)	27.00	Apr. 1, 1997
●170–199	(869–032–00061–1)	28.00	Apr. 1, 1997
●200–299	(869–032–00062–0)	9.00	Apr. 1, 1997
●300–499	(869–032–00063–8)	50.00	Apr. 1, 1997
500–599	(869–032–00064–6)	28.00	Apr. 1, 1997
●600–799	(869–032–00065–4)	9.00	Apr. 1, 1997
●800–1299	(869–032–00066–2)	31.00	Apr. 1, 1997
●1300–End	(869–032–00067–1)	13.00	Apr. 1, 1997
22 Parts:			
1–299	(869–032–00068–9)	42.00	Apr. 1, 1997
●300–End	(869–032–00069–7)	31.00	Apr. 1, 1997
●**23**	(869–032–00070–1)	26.00	Apr. 1, 1997
24 Parts:			
●0–199	(869–032–00071–9)	32.00	Apr. 1, 1997
200–499	(869–032–00072–7)	29.00	Apr. 1, 1997
500–699	(869–032–00073–5)	18.00	Apr. 1, 1997
●700–1699	(869–032–00074–3)	42.00	Apr.1, 1997
●1700–End	(869–032–00075–1)	18.00	Apr. 1, 1997
●**25**	(869–032–00076–0)	42.00	May 1, 1997
26 Parts:			
●§§ 1.0-1–1.60	(869–032–00077–8)	21.00	Apr. 1, 1997
●§§ 1.61–1.169	(869–032–00078–6)	44.00	Apr. 1, 1997
●§§ 1.170–1.300	(869–032–00079–4)	31.00	Apr. 1, 1997
●§§ 1.301–1.400	(869–032–00080–8)	22.00	Apr. 1, 1997
●§§ 1.401–1.440	(869–032–00081–6)	39.00	Apr. 1, 1997
●§§ 1.441-1.500	(869-032-00082-4)	22.00	Apr. 1, 1997
●§§ 1.501–1.640	(869–032–00083–2)	28.00	Apr. 1, 1997
●§§ 1.641–1.850	(869–032–00084–1)	33.00	Apr. 1, 1997
●§§ 1.851–1.907	(869–032–00085–9)	34.00	Apr. 1, 1997
●§§ 1.908–1.1000	(869–032–00086–7)	34.00	Apr. 1, 1997
●§§ 1.1001–1.1400	(869–032–00087–5)	35.00	Apr. 1, 1997
§§ 1.1401–End	(869–032–00088–3)	45.00	Apr. 1, 1997
2–29	(869–032–00089–1)	36.00	Apr. 1, 1997
30–39	(869–032–00090–5)	25.00	Apr. 1, 1997
40–49	(869–032–00091–3)	17.00	Apr. 1, 1997
50–299	(869–032–00092–1)	18.00	Apr. 1, 1997
300–499	(869–032–00093–0)	33.00	Apr. 1, 1997
500–599	(869–032–00094–8)	6.00	[4] Apr. 1, 1990
600–End	(869–032–00095–3)	9.50	Apr. 1, 1997
27 Parts:			
1–199	(869–032–00096–4)	48.00	Apr. 1, 1997

Title	Stock Number	Price	Revision Date
200–End	(869–032–00097–2)	17.00	Apr. 1, 1997
28 Parts:			
1-42	(869–028–00106–8)	35.00	July 1, 1996
43-end	(869-028-00107-6)	30.00	July 1, 1996
29 Parts:			
*0–99	(869–032–00106–5)	27.00	July 1, 1997
100–499	(869–032–00101–4)	12.00	July 1, 1997
500–899	(869–028–00110–6)	48.00	July 1, 1996
900–1899	(869–028–00111–4)	20.00	July 1, 1996
1900–1910 (§§ 1900 to 1910.999)	(869–028–00112–2)	43.00	July 1, 1996
1910 (§§ 1910.1000 to end)	(869–028–00113–1)	27.00	July 1, 1996
*1911–1925	(869–032–00116–5)	19.00	July 1, 1997
1926	(869–028–00115–7)	30.00	July 1, 1996
1927–End	(869–028–00116–5)	38.00	July 1, 1996
30 Parts:			
1–199	(869–028–00117–3)	33.00	July 1, 1996
200–699	(869–028–00118–1)	26.00	July 1, 1996
700–End	(869–028–00119–0)	38.00	July 1, 1996
31 Parts:			
0–199	(869–032–00112–0)	20.00	July 1, 1997
200–End	(869–028–00121–1)	33.00	July 1, 1996
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–028–00122–0)	42.00	July 1, 1996
191–399	(869–028–00123–8)	50.00	July 1, 1996
400–629	(869–028–00124–6)	34.00	July 1, 1996
630–699	(869–028–00125–4)	14.00	[5] July 1, 1991
700–799	(869–028–00126–2)	28.00	July 1, 1996
800–End	(869–028–00127–1)	28.00	July 1, 1996
33 Parts:			
1–124	(869–028–00128–9)	26.00	July 1, 1996
125–199	(869–028–00129–7)	35.00	July 1, 1996
200–End	(869–028–00130–1)	32.00	July 1, 1996
34 Parts:			
1–299	(869–028–00131–9)	27.00	July 1, 1996
300–399	(869–028–00132–7)	27.00	July 1, 1996
400–End	(869–028–00133–5)	46.00	July 1, 1996
35	(869–028–00134–3)	15.00	July 1, 1996
36 Parts			
1–199	(869–028–00135–1)	20.00	July 1, 1996
200–End	(869–028–00136–0)	48.00	July 1, 1996
37	(869–028–00137–8)	24.00	July 1, 1996
38 Parts:			
0–17	(869–028–00138–6)	34.00	July 1, 1996
18–End	(869–028–00139–4)	38.00	July 1, 1996
39	(869–028–00140–8)	23.00	July 1, 1996
40 Parts:			
●1–51	(869–028–00141–6)	50.00	July 1, 1996
●52	(869–028–00142–4)	51.00	July 1, 1996
●53–59	(869–028–00143–2)	14.00	July 1, 1996
60	(869–028–00144–1)	47.00	July 1, 1996
61–62	(869–032–00140–5)	19.00	July 1, 1997
●61–71	(869–028–00145–9)	47.00	July 1, 1996
●72–80	(869–028–00146–7)	34.00	July 1, 1996
●81–85	(869–028–00147–5)	31.00	July 1, 1996
86	(869–028–00148–3)	46.00	July 1, 1996
●87-135	(869–028–00149–1)	35.00	July 1, 1996
●136–149	(869–028–00150–5)	35.00	July 1, 1996
●150–189	(869–028–00151–3)	33.00	July 1, 1996
●190–259	(869–028–00152–1)	22.00	July 1, 1996
●260–299	(869–028–00153–0)	53.00	July 1, 1996
●300–399	(869–028–00154–8)	28.00	July 1, 1996
●400–424	(869–032–00152–9)	33.00	[7] July 1, 1996
●425–699	(869–032–00153–7)	40.00	July 1, 1997
●700–789	(869–028–00157–2)	33.00	July 1, 1996
●790–End	(869–028–00158–7)	19.00	July 1, 1996
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
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18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
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1–100	(869–028–00159–9)	12.00	July 1, 1996
101	(869–028–00160–2)	36.00	July 1, 1996
102–200	(869–028–00161–1)	17.00	July 1, 1996
201–End	(869–028–00162–9)	17.00	July 1, 1996
42 Parts:			
●1–399	(869–028–00163–7)	32.00	Oct. 1, 1996
●400–429	(869–028–00164–5)	34.00	Oct. 1, 1996
●430–End	(869–028–00165–3)	44.00	Oct. 1, 1996
43 Parts:			
●1–999	(869–028–00166–1)	30.00	Oct. 1, 1996
●1000–end	(869–028–00167–0)	45.00	Oct. 1, 1996
●44	(869–028–00168–8)	31.00	Oct. 1, 1996
45 Parts:			
●1–199	(869–028–00169–6)	28.00	Oct. 1, 1996
●200–499	(869–028–00170–0)	14.00	[6] Oct. 1, 1995
●500–1199	(869–028–00171–8)	30.00	Oct. 1, 1996
●1200–End	(869–028–00172–6)	36.00	Oct. 1, 1996
46 Parts:			
●1–40	(869–028–00173–4)	26.00	Oct. 1, 1996
●41–69	(869–028–00174–2)	21.00	Oct. 1, 1996
●70–89	(869–028–00175–1)	11.00	Oct. 1, 1996
●90–139	(869–028–00176–9)	26.00	Oct. 1, 1996
●140–155	(869–028–00177–7)	15.00	Oct. 1, 1996
●156–165	(869–028–00178–5)	20.00	Oct. 1, 1996
●166–199	(869–028–00179–3)	22.00	Oct. 1, 1996
●200–499	(869–028–00180–7)	21.00	Oct. 1, 1996
●500–End	(869–028–00181–5)	17.00	Oct. 1, 1996
47 Parts:			
●0–19	(869–028–00182–3)	35.00	Oct. 1, 1996
●20–39	(869–028–00183–1)	26.00	Oct. 1, 1996
●40–69	(869–028–00184–0)	18.00	Oct. 1, 1996
●70–79	(869–028–00185–8)	33.00	Oct. 1, 1996
●80–End	(869–028–00186–6)	39.00	Oct. 1, 1996
48 Chapters:			
●1 (Parts 1–51)	(869–028–00187–4)	45.00	Oct. 1, 1996
●1 (Parts 52–99)	(869–028–00188–2)	29.00	Oct. 1, 1996
●2 (Parts 201–251)	(869–028–00189–1)	22.00	Oct. 1, 1996
●2 (Parts 252–299)	(869–028–00190–4)	16.00	Oct. 1, 1996
●3–6	(869–028–00191–2)	30.00	Oct. 1, 1996
●7–14	(869–028–00192–1)	29.00	Oct. 1, 1996
●15–28	(869–028–00193–9)	38.00	Oct. 1, 1996
●29–End	(869–028–00194–7)	25.00	Oct. 1, 1996
49 Parts:			
●1–99	(869–028–00195–5)	32.00	Oct. 1, 1996
●100–185	(869–028–00196–3)	50.00	Oct. 1, 1996
●186–199	(869–028–00197–1)	14.00	Oct. 1, 1996
●200–399	(869–028–00198–0)	39.00	Oct. 1, 1996
●400–999	(869–028–00199–8)	49.00	Oct. 1, 1996
●1000–1199	(869–028–00200–5)	23.00	Oct. 1, 1996
●1200–End	(869–028–00201–3)	15.00	Oct. 1, 1996
50 Parts:			
●1–199	(869–028–00202–1)	34.00	Oct. 1, 1996
●200–599	(869–028–00203–0)	22.00	Oct. 1, 1996
●600–End	(869–028–00204–8)	26.00	Oct. 1, 1996
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1997. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1996. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments were promulgated during the period October 1, 1995 to September 30, 1996. The CFR volume issued October 1, 1995 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.